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6-112

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 518.

CHESTER A. ARTHUR, COLLECTOR OF THE PORT OF NEW YORK, PLAINTIFF IN ERROR,

vs.

ISAIAH A. LAHEY AND JOHN J. H. DUBORD.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED OCTOBER 13, 1876.

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1 *Writ of error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States for the southern district of New York, greeting:

Because in the records and proceedings, and also in the rendition of the judgment of a plea which is in the said circuit court before you, between Isaiah A. Lahey and John J. H. Dubord, plaintiffs, and Chester A. Arthur, defendant, a manifest error hath happened, to the great damage of the said Chester A. Arthur, defendant, as by his complaint appears: We, being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the party aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the second Monday of October, eighteen hundred and seventy-six, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done thereon to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the fourteenth day of March, in the year of our Lord one thousand eight hundred and seventy-six.

JOHN I. DAVENPORT,
Clerk.

The foregoing writ is hereby allowed.

SAM'L BLATCHFORD.

(Indorsed:) U. S. Supreme Court. Chester A. Arthur, plaintiff in error, against Isaiah A. Lahey et defendants in error. Writ of error. Filed Mc'h 14, 1876.

2 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John I. Davenport, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that by virtue of the foregoing writ or error, and in obedience thereto, that the following pages, numbered from one to one hundred and fifty-eight, inclusive, contains a true and complete transcript of the record and proceedings had in said court in the case of Chester A. Arthur, plaintiff in error, and Isaiah A. Lahey and John J. H. Dubord, defendants in error, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 2nd day of October, in the year of our Lord one thousand eight hundred and seventy-six, and of the Independence of the said United States the one hundred and first.

[SEAL.] JOHN I. DAVENPORT,
Clerk.

3 U. S. circuit court for the southern district of New York, in the second circuit.

Pleas before the judges of the circuit court of the United States of America for the southern district of New York, in the second circuit, at the United States court buildings in the city of New York, of the term of April, 1873, to wit, of the 25th day of September, in the year of our Lord one thousand eight hundred and seventy-three.

Witness the honorable Alexander S. Johnson, one of the judges of the said circuit court.

JOHN I. DAVENPORT,
Clerk.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Be it remembered that heretofore, to wit, on the 9th day of September, 1873, in the April term of that year, before the judges of the circuit court of the United States of America for the southern district of New York, in the second circuit, at the United States court buildings, in the city of New York, came Isaiah A. Lahey and John J. H. Dubord, by Stanley, Brown & Clarke, their attorneys, and brought into the
4 said court, before the aforesaid judges thereof, then there, their certain declaration against Chester A. Arthur, being in custody, &c., of a plea of trespass on the case upon promises; which said declaration follows in these words, that is to say:

The United States of America, circuit court of the United States for the southern district of New York.

ISAIAH A. LAHEY ET AL.
vs.
CHESTER A. ARTHUR.

In the second circuit, of the April term, in year one thousand eight hundred and seventy-three, Isaiah A. Lahey and John J. H. Dubord, copartners, doing business under the firm-name of Lahey & Dubord, plaintiffs in this suit, came into court, and by Stanley, Brown & Clarke, their attorneys, give the court now here to be informed that heretofore, to wit, on the twenty-ninth day of March last past this action was commenced in the superior court of the city of New York, according to the laws of the State of New York and the rules and practice of said court, in favor of the said plaintiffs against the defendant herein, upon the causes of action hereinafter set forth and the summons therein
5 filed with the clerk of said court. That the defendant afterwards, by his attorney, Geo. Bliss, j'r, esquire, duly appeared in said action, and thereupon, on the twenty-sixth day of May, in the year one thousand eight hundred and seventy-three, the said action was duly removed by writ of certiorari, for further prosecution, into this court, according to the act of Congress in such case made and provided; and the clerk of the said court did thereupon return the said writ with the said summons and duly file the same in this court; which allegations the defendant admits to be true.

Wherefore, let the further proceedings and trial in this action be continued in this court.

And the said plaintiffs, by their said attorneys, complain of said defendant of a plea of trespass on the case for promises, for that whereas said defendant, on 29th day of March, eighteen hundred and seventy-

three, at New York City, in the district aforesaid, was indebted to said plaintiffs in the sum of two thousand and $\frac{00}{100}$ dollars, lawful money of the United States of America, for duties on merchandise, to wit, thread-
lace, imported into and entered at the collection-district of the
6 United States for the city of New York on or about the 21st day of November, 1872, and on divers other days thereafter and until the 2nd day of March, in the year one thousand eight hundred and seventy-three, in the following vessels, to wit: S't Laurent, Cambria, Frisia, Calabrina, Cambria, Thurigia, and divers other from Havre, Liverpool, Hamburg, and divers other ports, unlawfully demanded, exacted, and received, at said New York City, by the said defendant, then collector of the customs for said district, under color of a law of the United States for the collection of duties on imports, and paid by the said plaintiffs under protest and appeal in writing in due form of law, and being so indebted, he, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, at the place aforesaid, undertook and then and there faithfully promised the said plaintiffs well and truly to pay unto the said plaintiffs the said sum of money when he, said defendant, should be thereunto afterwards requested.

And whereas, also, the said defendant afterwards, to wit, on the same day and year last aforesaid, at the place aforesaid, was indebted to
the said plaintiffs in the further sum of two thousand dollars, law-
7 ful money of the United States of America, for money before that time lent and advanced by said plaintiffs to said defendant, and at the special instance and request of the said defendant. And for other money by the said plaintiffs before that time paid, laid out, and expended for the said defendant, and at the like request of the said defendant. And for other money by the said defendant before that time had and received to and for the use of *use of* the said plaintiffs. And being so indebted, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, undertook and then and there faithfully promised the said plaintiffs well and truly to pay unto the said plaintiffs the said sum of money in this count mentioned when he should be thereunto afterwards requested.

Nevertheless, said defendant, although often afterwards requested so to do, has not paid said sums of money or any or either of them, or any part thereof to the said plaintiffs; but to pay the same or any part thereof to the said plaintiffs, has hitherto refused and still does refuse, to the damage of the said plaintiffs of three thousand dollars; and therefore the said plaintiffs bring suit, &c.

_____, _____,

Attorneys for the Plaintiffs.

8 United States circuit court, southern district of New York.

CHESTER A. ARTHUR }
ads.
ISAIAH A. LAHEY & AL. }

And the said defendant, Chester A. Arthur, by George Bliss, his attorney, comes and defends the wrong and injury when, &c., and says that he did not undertake and promise in manner and form as the said plaintiffs in this suit have above thereof declared against the said defendant, and of this he puts himself upon the country, and the said plaintiffs do the like, &c.

Therefore the issue above joined is ordered by the said circuit court

to be tried at the court appointed to be held at the U. S. court buildings, 41 Chambers street, in the city of New York, and in the district and circuit aforesaid, on the first Monday of April, 1875.

A day is given to the parties aforesaid, before the judges aforesaid, at the U. S. court buildings, in the city of New York, on the first Monday of April, 1875.

9 And now, at this day, to wit, on the first Monday of April, in the year of our Lord one thousand eight hundred and seventy-five, before the said judges of the said circuit court, at the U. S. court buildings in the city of New York, come the said plaintiffs, by their attorneys, aforesaid, and William J. Wallace, esq., district judge of the United States for the northern district of New York, in the second circuit, before whom the said issue was tried, hath sent hither his record had before him, in these words:

Afterwards, that is to say, on the day and at the place within contained, before William J. Wallace, esq., district judge of the United States for the northern district of New York, in the second circuit within named, according to the form of the statute in such case made and provided, come as well the within-named plaintiffs, by Stanley, Brown & Clarke, their attorneys, as the within defendant, by his attorney, George Bliss, and the jurors of the jury summoned to try the said issue, being called, also come, who, to speak the truth of the matters within contained, being chosen, tried and sworn, say, upon their oath, that the said defendant did undertake and promise in manner

10 and form as the said plaintiffs have within complained against him; and they assess the damages of the said plaintiffs, by reason of the premises, over and above their costs and charges by them about their suit in this behalf expended, to five hundred and ninety-seven dollars and ninety cents in gold coin, as principal, and seventy-eight dollars, currency, as interest, and for their costs and charges to six cents.

Therefore, it is considered that the said plaintiffs do recover against the said defendant their said damages, costs, and charges by the jurors aforesaid in form aforesaid assessed, and also eighty-seven dollars and eighty-five cents for their said costs and charges by the said court now here adjudged of increase to the said plaintiffs and with their assent; which said damages, costs, and charges, in the whole, amount to five hundred and ninety-seven dollars and ninety cents in gold coin, and one hundred and sixty-five dollars and eighty five cents in currency.

Judgment signed this 2nd day of February, 1876.

R. E. STILWELL,
Deputy Clerk.

(Indorsed:) U. S. circuit c't, southern dist. of N. Y. Isaiah A. Lahey et al. vs. Chester A. Arthur. Judgement record. Stanley, Brown & Clarke, att'ys for pl'ffs, 16 Wall st. U. S., No. 9, p. 73. Filed Feb'y 2, 1876.

11 United States circuit court, southern district of New York.

ISAIAH A. LAHEY AND JOHN J. H. DUBORD
against
CHESTER A. ARTHUR.

Afterwards, to wit, on the 20, 21, 22, & 23d days of April, 1875, came the said parties above named and their attorneys to try the issue afore-

said at a stated term of this court begun and holden at the city of New York, in the said district, and at the April term thereof, 1875, before the Hon. William J. Wallace, district judge, holding said term, and a jury was duly empannelled and sworn to try the said issues between the said parties, plaintiff being represented by M'r Stephen G. Clarke and Willam Stanley, defendant being represented by M'r H. E. Tremain, M'r E. H. Smith, and M'r R. M. Sherman. In the course of the said trial and before the rendering of the judgment herein, said
12 counsel for the defendant did take and allege exceptions to the rulings of the court in the admission and exclusion of evidence and to the charge of the court, and to the refusal of the court to charge in accordance with specific requests ,which said several exceptions are hereinafter severally set forth, and were duly taken and allowed, where it hereinafter appears that an exception was taken.

To maintain the said issues on the part of the plaintiffs, counsel for the plaintiff' proved importations by plaintiffs from foreign countries into the port of New York of certain goods specified in the several invoices and entries thereof hereinafter mentioned, and that the plaintiffs made the said several entries at the New York custom-house upon the said several invoices and paid duty thereon to the defendant, the collector of the port of New York, according to the liquidation of said duty by the said collector, at the rate of sixty per cent. ad valorem upon the goods involved in this action. The said several payments were made on or about the several dates of said payments specified in plaintiffs' bill of particulars. Said bill of particulars appears in the judgment-record.

13 Counsel for plaintiffs also called witnesses and produced in evidence certain papers, as follows:

Isaiah A. Lahey, who, being duly sworn, testified as follows:

I am an importer of laces and embroideries, of the firm of Lahey and Daboid, plaintiff', which firm has been in the lace business between five and six years. That is my signature to the entry (shown me) by the S't Laurent, dated Dec. 26th, 1872, and the invoice accompanying it is that upon which I made the entry at the custom-house, and this is our protest.

This entry, invoice, and protest were then put in evidence by plaintiffs

This invoice, entry, & protest is as follows

14 Messieurs Lahey & Daboid, à New York, Doit, à Oscar Foerster, au Havre, pour les merchandizes *a* après charges sur les steamer Saint Laurent, allant à New York.

L. & D.	167		Une caisse contenant	Silk lace			
37.704	121	40	in. 5 coupes laize sou noir	Silk lace	2.15	261	
5	56	70	3 60%	Silk lace	2.45	138.90	
						399.90	
						16	
							383.90
b 480		6	Ceintures laina	Worsted-lace shawls, 50-40, 6 ct's	12.00	72.00	
468		4	Cuanon "	Worsted-lace shawls, 50-40, 6 ct's	17.00	68.00	
9		4	" "	Worsted-lace shawls, 50-40, 6 ct's	19.00	76.00	
470		7	Capes "	Worsted-lace shawls, 50-40, 6 ct's	16.50	115.50	
7		4	Marne oln't d'de "	Worsted-lace shawls, 50-40, 6 ct's	31.50	126.00	
2		7	Lambatta "	Worsted-lace shawls, 50-40, 6 ct's	15.75	110.29	
3		4	" "	Worsted-lace shawls, 50-40, 6 ct's	17.00	68.00	
4		7	" "	Worsted-lace shawls, 50-40, 6 ct's	16.50	115.50	
5		4	" "	Worsted-lace shawls, 50-40, 6 ct's	36.00	144.00	
6		52	" "	Worsted-lace shawls, 50-40, 6 ct's			
7		18	70 barbes "	Worsted-lace shawls, 50-40, 6 ct's	6.00	420.00	
8		50	"	Worsted-lace shawls, 50-40, 6 ct's			
9		66	60 " "	Worsted-lace shawls, 50-40, 6 ct's	6.40	422.40	
485		3	Fargarettes "	Worsted-lace shawls, 50-40, 6 ct's	31.50	94.50	
6		7		Worsted-lace shawls, 50-40, 6 ct's	36.00	252.00	
7		4		Worsted-lace shawls, 50-40, 6 ct's	46.50	186.00	
8		4		Worsted-lace shawls, 50-40, 6 ct's	64.00	256.00	
9		4		Worsted-lace shawls, 50-40, 6 ct's	79.00	316.00	
490		1				57.00	
1		1				86.00	
2		1	Cuonon			45.60	
						3030.15	
			20 & 2%			654.55	
							2375.60
910 62		6	Barbes thread lace	Silk-lace wearing apparel, 60%	3.40	20.40	
3		6	" " "	Silk-lace wearing apparel, 60%			
4		6	12	Silk-lace wearing apparel, 60%	4.20	50.40	
5		6	" " "	Silk-lace wearing apparel, 60%	5.25	31.50	
6		6	" " "	Silk-lace wearing apparel, 60%			
7		6	12 " "	Silk-lace wearing apparel, 60%	6.40	76.80	
8		6	" " "	Silk-lace wearing apparel, 60%	9.75	58.50	
9		1	" " "	Silk-lace wearing apparel, 60%		11.25	
910 70	20		thread lace	Silk-lace wearing apparel, 60%	1.80	76.00	
1	42	6	Barbes	Silk-lace wearing apparel, 60%	8.25	49.50	
						374.35	
			5%			18.70	

								355.65
910 75		1	Poilette bordiere Tentelles	Silk-lace veils, 60%		13.50	7.25	
6		2	" " "				27.00	
7		1	" " "				14.75	
8		1	" " "				12.00	
							61.40	3115.15
			Report				61.00	3115.15
18			Report				61.00	3115.15
910 79		1	Poilette-lace bordiere	Silk-lace veils, 60%		10.75	11.25	
1,080		2					21.50	
1		1					10.00	
2		1					6.75	
3		2				6.00	12.00	
4		1					8.00	
							130.50	
			Rabais, 20%				26.10	
							104.40	
			Escompte, 5%				5.20	
								99.20
d 703	21	60	40—142 Guipure noire	Silk-lace, 60%		2.25	94.50	
		20						
4	28	80	60—50, 40 Entre durne			1.50	75.60	
		21					63.00	
2	21	"	"			3.00		
1	15	75	"			3.75	59.05	
								292.15
b 1,011		2	douzaines crarbes Laralluris	Silk cravats, 60%		18.75	34.50	
1,049		1½	"			34.50	43.10	
1,066		1½	"			26.25	39.40	
1,053		1	"			42.00	42.00	
1,073		1	"				28.50	
1,120		1	"				26.00	
1,082		1½	"			36.00	63.00	
1,071		6	"			19.50	117.00	
604		6	"			27.00	162.00	
663		4½	"			26.00	127.75	
481		3	Voilettes imitation sou noire	Silk veils, 60%		5.50	33.00	
2		3	6 " "			3.25	29.25	
3		9	"			2.85	25.65	
4		9	"				744.15	
			10%				77.40	
								696.75
17		7	Parves toiles Cradus			2.90	20.30	
18		12				3.25	39.00	
19		10				4.00	40.00	
21		10				5.00	50.00	

Messieurs Lahey & Daboid, à New York, Doit, à Oscar Foerster, au Havre, pour les merchandizes *a* après charges sur les steamer Saint Laurent, allant à New York.

22		6					
618, 585		48	Chemises percales feston		3.30	21.80	
81	P.	9	"		4.40	211.20	
85	P.	9	218	Cott. wearing-app'l, 35%-10	4.90	88.20	
B. 81		18					
B. 85		18	236 de arent		6.75	243.00	
91-171		12	" " "		12.50	150.00	
						863.50	
						43.15	820.35
							5023.60
			Commission, 2½%				125.60
			Emballag. & legalisation				28.00
			Fr's				5177.20

SERO.

HAVRE, *le* 3 *Feb.*, '72.

O. FOERSTER.

L. & D. $167, are as noted Jan. 7, '73, correct.

Approved:

T. W. GIBSON.

WM. A. DARLING, *Appraiser.*

IMPORT ENTRY.—6470.

[W'm Runner & Ascher, custom-house brokers, No. 48 Pine st.]

Entry of merchandise imported by Lahey & Daboid in the S. S. St Laurent, whereof is master, from Havre.

NEW YORK, *December* 26, 1872.

Marks.	Nos.	Packages and contents.			50 C. W.	35% less 10%.	40% less 10%.	6%.	Total.	
L. & D	167	One case cotton lace				Fr. 820. 35				Havre, 3 Dec'r, 1872.
		silk do						1, 827 65		
		worst'd do			6 w.		2, 375 60		Fr. 5, 023. 60	
		case & shipping change				8	10	10	28	
		Com. 2½				20. 53	59 40	45 67	125 60	
						Fr. 48. 88	2, 445 80	1, 883 32	Fr. 5, 177. 20	
			158	35	18⅞		158			
			6	50			55 30			
			455	40			3 00			
				10			182 00			
			359	60			240 30			
							24 03			
							216 27			
							200 08			
							$426 27	M.		

Dec. 28. L. B. C.

LAHEY & DABOID,
29 *Howard St.*

17 *Owner's oath.*

I, P. Lahey, do solemnly and truly swear that the entry now delivered by me to the collector of New York contains a just and true account of all the goods, wares and merchandise imported by or consigned to Lahey & Daboid, in the S't Laurent, whereof, is master, from Havre; that the invoice which I now produce contains a just and faithful account of the actual cost of the said goods, wares, and merchandise, of all charges thereon, including charges of purchasing, carriages, bleaching, dyeing, dressing, finishing, putting up and packing, and no other discount, drawback, or bounty but such as has been actually allowed on the same; that I do not know nor believe in the existence of any invoice or bill of lading other than those now produced by me, and that they are in the state in which I actually received them, and that the said invoice and the declaration therein are in all respects true, and were made by the person by whom the same purport to have been made. And I do further solemnly and truly swear that I have not in the said entry or invoice concealed or suppressed anything whereby the United States may be defrauded of any part of the duty lawfully due on the said goods, wares, and merchandise; and that if, at any time hereafter, I discover any error in the said invoice, or in the account now produced of the said goods, wares, and merchandise, or receive any other invoice of the same, I will immediately make the same known to the collector of the district.

J. A. LAHEY.

Sworn this 26 day of Dec'r, 1872, before me.

B. F. WYMAN,
Deputy Collector.

6470. 426.27. Import. Name, Lahey & Dubord; ship, st'r S't Laurent; from Havre; date, Dec. 28, 1872; appl. 9424, Dec. 28, '72; silk lace, &c.; par. Dec. 28, '72; coll's decis. aff'd; sec. T. Jan. 24, '73. Liquidated Feb. 14.—J. B. P. W'm Rumner & Ascher, custom-house brokers and forwarding agents, 48 Pine street, New York, Au. 14, '76. 10 Jan'y.

18 *Protest.*

NEW YORK, *December 28th*, 1872.

Hon. CHESTER A. ARTHUR,
Collector of the Port of New York:

SIR: We do hereby protest against the payment of 60 % duty charged on silk laces contained in our entry, by steamer S't Laurent, in case L. D. 167, claiming that under existing laws said goods are only liable to a duty of 50 %, because they contained partly cotton. We do further protest against the payment of 60 % on other laces, claiming that the same should be 30 %. We pay the amount exacted in order to get possession of our goods, and claiming to have the difference refunded.

Very respectfully, yours,

LEAHEY & DUBOID.

19 The date of liquidation of duty on this entry was February 14th, 1873. The date of receipt of plaintiffs' protest, Dec. 28, 1872. The date of plaintiffs' appeal to the Secretary of the Treasury, December 28, 1872, and the decision of the Secretary of the Treasury

on said appeal was made affirming the collector's liquidations January 24, 1873.

This action was commenced March 29th, 1873. The protest upon this and all the other entries involved in this action and mentioned
20 in the plaintiffs' bill of particulars aforesaid was in the same form and tenor as the protest hereinafter set forth.

The plaintiffs then put in evidence their entry by the Cembria, dated Dec. 9th, 1872, liquidated January 9th, 1873, protested upon Dec. 18th, 1872; appeal to Secretary dated Dec. 18th, 1872, and decision thereon dated January 9th, 1873.

Also, their entry by the Frisea, dated Dec. 12th, 1872, liquidated January 14th, 1873; protest thereon, dated December 19th, 1872; appeal, December 19th, 1872; decision of the Secretary, January 9th, 1873.

Also, their entry by Calabria, dated December 14th, 1872, liquidated May 27, 1873; protest thereon, dated December 19, 1872; appeal, dated December 14, 1872, and decision of the Secretary, June 14th, 1873.

Also their entry by the Cembria, dated January 17th, 1873, liquidated May 12, 1873; protest, January 20, 1873; appeal, January 20, 1873; answer February 13th, 1873.

Also their entry by the Thuringia, dated January 14th, 1873; date of liquidation March 5, 1873; protest dated January 14th, 1873; appeal dated Janu'ry 14th, 1873; answer, February 17th, 1873.

21 Also their entry by the Fresia, January 27th, 1873; date of liquidation March 31st 1873; protest, February 13, 1873; appeal, February 13, 1873; answer, March 12, 1873.

The following is so much of the invoice accompanying said entry as relates to the packages specified in the protest thereupon:

Extract from said invoice.

Messieurs Lahey & Dubord á New York, Doivent á Oscar Foerster au Havre. Am't of inv. 22,903.50. Les merchandis ci-aprés chargees sur le steamer allemand "Frisia" partant le 12 Janvier, 1873, du Havre pour New York.

			L. & D. 171 Une caisse contenant.					
30*	723		24	Pis de 22 " = 528 Valenciennes imitation.....	Cott lace. 30 less 10.	Add to make value 50 c't'm's per metre.	1 50	792
				15%.....				118 80
								673 20
				3%.....				20 20
								653
671	15	90		Point applique Mirecourt		Add to make value 20 c't'm's per metre.	2 40	38 15
2	15	60				25	3	46 80
3	15	10				30	3 25	49 10
4	14	95				35	3 60	53 80
5	15	35				50	5 50	84 40
6	15	50			Thread lace. 30.	55	6	93
								365 25
677	14	?						
8	12	70				55	6	89 40
9	12	50	?			60	6 50	82 50
680	18	35		$30.85 Point appliqué Mirecourt		90	10	308 50
								845 65
				20%.....				169 30
								676 35
17*	724		12	Pis de 33. = 396 Imitation b'k thread lace		Add to make value 8 c't'm's per metre.	90	356 40
5			12	" 33. = 396		7 c.	75	297 40
6			24	" 33. = 792		5 c.	60	475 20
7			24	" 33. = 792		4 c.	45	356 40
8			24	" 44. = 1, 056		2 c.	25	264
9			24	" 44. = 1, 056		1 c.	10	105 60
730			24	" 44. = 1, 056 ?				
1			26	" 44. = 1, 144 } 2, 200		3 c.	35	770
								2, 624 60
				15%.....	Silk lace. 60.			393 70
								2, 230 90
				4%.....				89 20
17*	732		4	Pis de 16. 60 = 66. 40 } Imita. la'ze b'k				2, 141 70
			1	16. 50 }				
			5	16. 70 = 83. 50 }				

		3	16. = 48.						
		2	16.10 = 32.20	246.60					
	733	5	17.20 = 86.						
		5	21.50 = 107.50	193.50					
		3	23.30 = 69.90						
	734	2	24. = 48.						
		1	23.50						
		1	20.10						
		1	23.70						
		1	23.80						
		1	23.80	232.90					
			6%						
23									
	16° 714	24	Pis de 33. = 792	B'k thread imita					
	5	24	33. = 792						
	6	24	33. = 792						
	7	24	33. = 792	3,168					
	8	11	33. = 363						
	9	24	33. = 792	1,155					
	720	12	33. = 396						
	1	24	33. = 792	1,188					
	2	10	33. = 330						
			15 & 6%						
	*1095	22 70	B'k thread lace						
	*765	14 70	B'k guipure						
	*1103	5 30	5.05, 5.) 15.35. Net Caen		Silk lace.				
	*1104	10 30	In 2 pieces		60.				
	*1105	4 30							
	*1106	3 70							
	*1107	5 60	5.50) 11.10.						
	*1108	4 40							
	*1109	6 40	5.) 11.40						
	*1110	5 10	4.35, 4.70, 6.05) 20.20						
	*1111	7	Square veils						
	*1105	1	Fan cover, b'k-thread lace						
	*1112-1113	2	do.						
	*1114	1	do.						
			5%						
			Fan naere violet garni						
	*1098	1							
	1102	1							
	1099	1							

Add to make value 25 c't'm's per metre.	2 75	678 20			
20 c.	2 25	435 40			
20 c.	2 10	489 10			
		1,602 70			
		96 10			
			1,506 60		
Add to make value 3 c. per metre.	40	1,267 20			
4	45	519 75			
2	30	356 40			
5	57	188 10			
		2,331 45			
		468 45			
			1,863		
Add to make value 90 c. per metre.	9 50	215			
25	3	44 10			
40	4 50	69 10			
35	4	41 20			
85	9	38 70			
80	8 50	31 40			
55	6	66 60			
65	7	30 80			
55	6	68 40			
50	5 50	111 10			
1.25, 1.10	13	91			
		12			
3.	32	64			
2.25		25			
		909			
		45 45			
			863 55		
Add to make value 5 fr.		60			
4		48			
4.50		50			
5. each.		120			
4¼ each.	50	100			

Extract from said invoice.

Messieurs Lahey & Dubord á New York, Doivent á Oscar Foerster au Havre. Am't inv. 22,903.50. Les merchandis ci-aprés chargees sur le steamer allemand "Frisia," partant le 12 Janvier, 1873, du Havre pour New York.

1097	2	.....	Fans. 35.	6.		65	
1101	2	.....		4.		45	
1096	1	.....		6.		62	
1101	1	Fans, cases		7.5 c't'm each.		30	
1096	1	do.		50 each.		48	
200	3	do.		à sois fr. 5. each.		55	
201	4	do.		à cott 3. 50 each.		40	
2825	12					723	
1798	12					144 60	
		20%					578 40

* * * * * * * * * * * * * * *

L & D
* * * as noted.
171 Feb'y 3, '73.
* * *

Approved:
WM A. DARLING,
Appraiser.

T. W. GIBSON.

24 The classification endorsed on the foregoing invoices at various places opposite the brackets thereon, was made and endorsed at the appraiser's office.

25 The following is said protest against liquadation of entry and payment of duty:

NEW YORK, *February* 13, 1873.

TO COLLECTOR OF CUSTOMS,
Port of New York:

SIR: We do hereby give you notice, pursuant to the requirement of the 14th sec. of the act entitled "An act to increase duties on imports, and for other purposes," approved June 30th, 1864, of our dissatisfaction at your decision and liquadation of our entry made in your office, as follows: For L. D # 171, one case thread lace, per st'r Frisia, from Hamburg, 27 Jan'ry, 1873, at the rate of duty of sixty per centum ad valorem.

The ground of our dissatisfaction, objection, and protest, both against said liquidation and against any and every payment which we may be required to make, or may make, thereunder, is that the merchandize aforesaid is only liable under existing laws to a duty of thirty per centum ad valorem, being thread laces.

We shall hold you responsible for the difference between thirty
26 per centum ad valorem, or the legal rate of duty for the goods referred to above, and the illegal rate of sixty per centum ad valorem claimed by you on the decision and liquidation before stated.

In paying the amount thus illegally exacted, we do so only for the purpose of obtaining or retaining the possession of our property.

LAHEY & DUBORD,
Per ISAAC PHILLIPS, *Att'y.*

27 Also their entry by the Cimbria, February 28, 1873. Date of liquidation April 4, 1873. Protest March 3d, 1873. Appeal March 3, 1873. Answer March 25, 1873.

All the goods in question were described on the aforesaid several entries as "silk laces," and duty thereon estimated at sixty per centum ad valorem at the time the said several entries were made and verified according to law, as appears in the entry above fully set forth.

It was understood by the court and counsel at this point that plaintiffs had exhausted the proof they proposed to offer in respect to the statutory preliminaries required in cases of this character by sec. 14, act of June 30, 1864 (U. S. Rev. Stat., sec. 2931).

The examination of the witnesses on the stand was then re-
28 sumed on the following day, and plaintiffs' counsel were proceeding to introduce testimony tending to shown under what name laces have been known in trade and commerce, as affecting the classification and rate of duties upon the laces in question, when defendant's counsel objected to such testimony as incompetent, irrelevant, and immaterial, and that plaintiffs were bound by their entry of the goods as "silk laces," and also on the ground that no proper foundation had been laid, and that no recovery can be had in point of fact in this action, because it is not shown that the requirements of the aforesaid statute in respects to protests, appeals, etc., have been complied with.

Defendants objected that the duty was paid and liquidated according

to plaintiffs' original entries, and no sufficient protest, etc., was subsequently interposed.

The said objections were overruled, and defendant's counsel duly excepted.

The testimony was then resumed as follows:

Q. To what parts of the country has your firm sold laces since you have been in the business?

29 (Same objections, rulings, and exceptions.)

A. We have sold goods throughout the country to different cities, West and South and East. I am one of the plaintiffs; my place of business is 110 Grand street, New York City.

Q. To what extent has your firm dealt in laces during its existence, generally? It has been in existence about seven years, I think you said?

A. Between five and six years. You mean to what extent and value?

Q. Yes; give us some idea of the amount.

(Objected to; objection overruled; exception taken.)

A. I could not give you the amount.

Q. Prior to the formation of your firm, what was your business occupation?

A. I was occupied in the house of Duden, Freres & Co.

Q. What was your department in that house; what did you do?

A. I was regarded in the house as the junior partner. I went to Europe for the house, and I sold goods.

Q. Sold goods here in the city?

A. Yes, sir; I was with that house ten years and a half.

30 Q. To what part of the country did they sell laces?

A. Throughout the entire country; their business was a large one.

Q. Prior to your being with the house of Duden, Freres & Co., with what house were you?

A. I was with Edward Lambert & Co.

Q. Where was your place of business?

A. Chambers street.

Q. How long were you with them?

A. About a year.

Q. Did that house deal in laces to any considerable extent?

A. Not to my knowledge.

Q. Prior to being with Edward Lambert & Co., with what house were you?

A. With A. T. Stewart & Co.

Q. How long were you with A. T. Stewart & Co.?

A. I was there about five years, altogether.

Q. In what department?

A. The lace department.

Q. What was your business in the lace department?

A. I was salesman in the last year.

Q. During this entire period of time, then, did you have to do more or less with laces?

A. I did, sir.

Q. That covers a period of about how many years?

A. From 1853.

Q. Do you or not know under what names laces have been sold

31 in this country by importers and bought by jobbers for the last fifteen years?

(Objected to; objection overruled; exception taken.)

A. I do.

Q. Did you yourself see the laces referred to in the invoices and entries in evidence when they were unpacked?

A. I did.

Q. (Handing samples to witness.) Please look at these and state whether these are samples of those laces?

(Objected to as leading and as characterizing samples in advance.)

The COURT. I think you had better confine him to the particular importation of which you claim these to be samples.

Q. Are those samples articles similar and like to some of the goods which were imported by the entries and invoices which have been read in evidence?

(Objected to.)

The COURT. You can ask the witness if those are samples of a particular importation.

Q. Have you samples of these importations which are in evidence?

A. I am not positive that I have.

Q. You are not positive that you have the identical goods?

A. No, sir.

32 Q. You know what the goods were?

A. Yes, sir.

Q. Were samples taken from those goods and sent down to your attorneys; do you know about that?

A. I am not aware that there was.

Q. Are those articles which you hold in your hand like the goods which were imported by those importations?

(Objected to; objections overruled; exception taken.)

A. Those are the goods in question; those are the thread-laces in question.

(Defendant's counsel moves to strike out the answer as not responsive. Motion denied; exception taken.)

Q. Those are like the goods in question you say?

A. Yes, sir.

By the Court:

Do you mean to say they are like them in material or in what respect?

A. They are made in the same manner, they are made on a cushion.

Q. And of the same material?

A. Of the same material.

By M'r Stanley:

And are they known by the same commercial terms as those

33 which were shown in the importations—the identical goods?

(Objected to until the samples are in evidence.

Samples offered in evidence.

Defendant's counsel objects to the introduction of the samples until he has had an opportunity to cross-examine the witness in respect to them.

Objection overruled; samples received in evidence and marked Exhibits 1, 2, and 3. Exception taken.)

Q. Pleas' state to the jury by what name, if any, goods like these samples, the goods which came in those cases referred to in the entries which were of the description of those samples—by what name they were known and dealt in in this market by importers and dealers during the time that you have been connected with the lace-trade.

(Objected to on the grounds already stated, namely, as irrelevant and immaterial and no proper foundation laid, and on the additional ground

that the goods have been entered by the plaintiffs as silk
31 laces, and no testimony can vary that designation for dutiable purposes.

(Objection overruled; exception taken.)

Ans. Thread laces.

Q. Have you during that period of time known them to have been dealt in in this market by any other or different name than that of thread-laces.

A. No, sir.

Q. What material are those goods made of?

A. They are made of silk.

Q. Where did those goods come from?

A. They came from France and Belgium and from England.

Q. The invoices that are in evidence, of course, were made out on the other side.

A. Yes, sir.

Cross-examined by defendant's counsel:

Q. How are you enabled to say that one of these samples is like one of the importations in question?

A. I can infer that; it is made in the same manner; it is the same fabric.

Q. Is that all you know about it?

A. That is all, sir.

Q. You can tell that by looking at it, can you?

A. Yes, sir.

Q. Anything that is made of the same material and made in
35 the same manner would be like that importation, would it not?

A. It would sir.

Q. Like the importation in question, leaving out the question of pattern and design, and would be known by the same commercial term, would they not?

A. Yes, sir.

Q. Will you please give us the definition of "thread-lace"?

A. Thread-lace is an article made on a cushion; the pattern is made on parchment, and is made from thread that is wound on bobbins; those bobbins are moved by the hand.

Q. Laces made in that way are thread-lace?

A. They are, sir.

Q. Have they any other commercial name than that?

A. That is the name I have always known them by since I have been in the trade.

(Question repeated.)

A. In a certain district in France, I believe.

Q. In this country?

A. No, sir; they have not.

Q. Did you ever see those samples before—1, 2, and 3?

A. Yes, sir.

Q. Where?

A. I saw them in my own store.

Q. When?

A. I saw two of them; they were cut off goods that are now in our possession.

Q. Which two?

A. The two laces by the yard. That is a barbe that was sent for yesterday to my store by a messenger.

36 Q. No. 3 is a barbe, is it?
A. Yes, sir.
Q. That is the commercial name of that article?
A. Yes, sir.
Q. Silk-barbe?
A. Thread-barbe.
Q. I ask you, is it a silk barbe?
A. It is silk, sir.
Q. Are these silk laces, 1 and 2?
A. They are.

Redirect:

Q. Is this description of lace (No 3), which you say is a barbe, one of the class of thread-laces?
A. Yes, sir.

Recross:

What do you mean by one of a class of thread-laces?
M'r STANLY. One of the class, I said.
A. I mean that that is a representative of what is known as thread-laces?
Q. Do you mean that all thread laces are like those, number 3.
A. They are made in the same manner that this is made.
Q. You mean to say made on a cushion and by hand.
A. Yes, sir.
Q. And whenever you see a lace made on a cushion and by hand, it is a thread-lace?
A. Not essentially thread; there are other commercial designations as well.
37 Q. How many kinds of thread-lace are there by their commercial designations?
A. That is the only kind I know of and white thread-lace.
Q. Is the term "black thread-lace" a commercial term?
A. No, sir; simply to distinguish between white and black.
Q. I don't ask you that; I ask you if it is a commercial term.
A. No, sir.
Q. Never, was it?
A. No.
Q. You have been in the business 20 years, haven't you?
A. Yes.
Q. And never heard the term "black thread lace" used.
A. Oh, yes; when they want black thread-lace, they ask for black, to distinguish it from white.
Q. Did you ever hear of a thread-lace made of cotton?
A. I did, sir.
Q. When did you ever hear of a thread lace made of cotton?
A. A great many years ago.
Q. Did you ever say you did not ever hear of a thread-lace made of cotton?
A. I don't think I did.
Q. Were you examined once as a witness upon this subject?
A. I was, sir.
Q. Do you recollect being asked the question, "Do you know of any thread-lace made of cotton?" and of answering "I do not?"
A. I am a little astonished at that.
Q. You did make such an answer to such a question, did you not?
A. I doubt it.

Q. Did or did you not make such answer to such a question?

38 A. I don't think I could knowingly make such an answer, because I was positive of the existence of thread lace made of cotton.

RICHARD MUSER, called by plaintiffs, being duly sworn, testifies as follows:

I am an importer of laces and embroideries and white goods, a member of the firm of Duden, Freres & Co. I believe we deal in all kinds of laces.

Q. For how long a time have they been in business?

A. I cannot state the exact year; I believe 1855. I have been in that house, in this country, since 1863; as buyer and salesman and partner for the last eight years.

Q. In general terms, about how extensively has that house been engaged in the lace business?

(Objected to as immaterial & irrelevant; admitted; exception taken.)

A. Our sales are over a million dollars a year; about a million and a quarter.

Q. And, to buyers, from what part of the country do you sell?

A. All over the United States, South and West. We have a branch house in California. We sell all over, and have done for a series of years.

39 Q. Are you familiar with the names of laces in the trade and commerce of the country, with the names since you have been connected with that business?

A. I am.

Q. Please look at these samples and state whether or not they have any special designation or name in trade between importers and their customers, and whether they have had since you have been acquainted with the business.

(Objected to. Objection overruled; exception taken.)

A. They have had and have now.

Q. Please state how they have been known during the time you have been acquainted with the lace business, bought and sold.

(Sample 1 and No. 2 has always been known as thread-lace, and sample No. 3 has been known as a thread-lace barbe.)

Q. For what is that particular article thread-lace barbe used?

A. It is used for different purposes. Ladies wear it on the head or round the neck; it is used for ornament.

Q. Of what material is it composed?

A. It is made of silk.

Q. The rest are all made of silk?

A. Yes, sir.

Q. What does the term barbe mean?

40 A. A barbe means an article of this shape; it refers to the shape only. Barbes are made in all kinds of laces.

Q. And out of what are articles of that shape made?

A. They are made of black lace, point lace; they are made of imitation silk laces, and they are made of thread-laces.

Q. Of what is this one made?

A. This one is made of silk.

Q. But what kind of lace?

A. This is a thread-lace.

The COURT. You mean that it is made of the lace that is commonly known as thread-lace?

A. Known as thread-lace; yes, sir. The material is silk.

Q. Of how many colors are thread-laces?

A. I have only known thread-laces of two colors—black and white.

Q. Of what material have the white thread-laces been made since you have been in the business?

A. As far as I know, they have always been made of cotton. I have sometimes seen them of cottons but having a thread run through that was supposed to be flax. I suppose it was flax, but the main parts of the lace was cotton.

Q. At any rate the great majority of the white laces that have been made have been made of cotton?

41 By the court:

Have you ever known of any white thread-lace to have been made of silk?

A. I have not, sir.

Q. Are you familiar with the manufacture of thread-laces?

A. I am, sir.

Q. Where were you prior to being connected with the firm of Duden, Feres & Co., in New York City, as you have testified?

A. I was in Brussels since 1858 or 1859 over 3 years.

Q. Were you connected with the same firm there?

A. The same firm.

Q. While there, were you familiar with the manufacture of laces?

A. I was.

Q. Are you also familiar with the manufacture of silk?

A. Well, not especially. I have raised silk myself when a boy at school.

Q. Are you familiar with the manufacture of silk thread?

A. I have seen it made; I have never been in the business myself.

Q. Will you please tell the jury how silk thread is made?

(Objected to as immaterial and irrelevant; objection overruled; exception taken.)

42 A. It is a very simple process. The thread, as it comes from the cocoons, is twisted; sometimes they use two, three, four, or five strands to make a thread by simply twisting the thread as it comes from the cocoon. I have seen them made of two, three, and four strands. They might make them of twenty strands, as far as I know.

Q. How long are those threads that come from the cocoons?

A. I have never measured them, but I should suppose—I have wound them off sometimes—I suppose they would measure two thousand yards, probably over.

Q. Just unwound in one continuous thread?

A. Yes; that is by being careful; sometimes it is very easy to break the thread.

Q. How is the thread out of which thread-lace is made, in respect to twist and hardness, as compared with other classes of thread?

A. You mean with other classes of thread used for the lace business?

Q. Are all laces made of thread?

A. I suppose so.

Q. (By the court.) How does the thread in thread-lace differ from other thread?

A. It is harder; it is twisted harder, and made of more strands than the thread used to make imitation laces of what is called silk laces.

43 Q. Please look at that (hands sample to witness). What is it?
(Objected to; admitted; exception taken.)
A. That is the thread used to make the *the* thread-lace.
(Sample offered in evidence and marked "No. 4.")

By the court:

How do thread laces differ from other silk laces?
A. We always refer to the commercial designations in this country.
Q. I am speaking about the material and manufacture.
A. What we call silk laces are made of a lighter thread, and are made by machinery.

By M'r Stanly:

Q. State how thread-laces are made.
A. The pattern is drawn on a piece of parchment, and the lines of the pattern are perforated, small holes put in, and this parchment is pinned on a cushion and the lines of the pattern are filled by inserting needles in them; around these needles the thread is woven so as to form the pattern which was originally drawn on the parchment. The thread is wound on bobbins—small pieces of wood; it is twisted round the pins.

44 Q. You have said that silk laces were made by machinery—laces that were known commercially as silk laces?
A. Yes, sir.
Q. Are there any laces which are made by hand which are known commercially as silk laces?
A. I don't know of any.
Q. Can experts who are familiar with the art or with the trade in thread-laces distinguish at a glance laces which are known as thread-laces from others?
A. Yes, sir; very easily.
Q. Is there or has there been since your acquaintance with the lace-trade a class of laces known commercially as silk laces?
(Objected to; objection overruled; exception taken.)
A. Yes, sir.
Q. How long have laces been made out of silk by machinery?
A. I could not tell you; a great deal further back than I can remember. I suppose before I was born. I could not fix any date.
Q. The machine-made laces are often, are they not, of the same pattern as the laces made by hand?
A. Yes, sir; very often.
Q. To an experienced eye they have a different look, have they not?
A. Yes, sir; they are materially different.

45 Q. They can be at once distinguished by those who are in the trade?
A. Yes; I guess the ladies can distinguish them themselves.
Q. Are there articles known in the trade as cotton laces?
(Objected to as immaterial; objection overruled; exception taken.)
A. Laces made of cotton? There are.
Q. Are the laces which you have spoken of as thread-laces, which are white, known commercially in the trade in any way as cotton laces?
No, sir; they are not.

Cross-examined by defendant's counsel:

Q. Will you please repeat to the jury your definition of thread-lace?
A. I don't think I have given a definition of what I know to be thread-

lace. I only said that when I see a lace I know whether it is thread-lace or any other lace.

Q. Can you give to the jury a definition of the commercial term thread-lace?

A. I can.

Q. Please do so.

A. All laces similar to those samples there are thread-laces.

Q. Suppose you didn't have any samples at all before you; I
46 want you to explain to the jury what is the meaning of the term thread-lace, so that one of the jury could identify the article by your description.

A. I would not undertake to do that; I might not be quite able to do so. In the first place, my English is not sufficiently good to undertake such an explanation.

Q. Please do the best you can.

A. I would rather not do it.

Q. I would like to have the best definition you can give.

A. I have told the jury how this thread-lace is made, and I could hardly go into a more detailed account of it.

Q. (By the court.) What are the prominent features that distinguish it from the other silk-laces?

A. As I said before, the thread used in making this thread-lace is of a harder twist, and it has characteristics of its own, so that any man who knows lace could tell right away whether those are thread-laces.

Q. Please tell us what those characteristics are.

A. The ground-work of the laces, and the way the flowers are worked, and the pattern shows that it is different from any other lace.

Q. Why; in what respect?

A. There are other laces—real laces—made of silk where the
47 ground-work, instead of being made of round holes, as these are, is made of a kind of netting.

Q. What are they called?

A. They are called guipure laces.

Q. Is the thread in them any different from the thread in those you have been describing, except that it is a little bit harder?

A. I don't think it is; it is not quite so hard; it is a thinner thread.

Q. It is not quite so hard; that is all?

A. That is all.

Q. Any lace, then, made by hand on a cushion, from a pattern on a parchment, and of a hard-twisted thread of silk, is a thread-lace?

A. No, sir; I don't say that.

Q. That is not so, is it?

A. There may be other laces made of hard-twisted thread, and I don't doubt that they could make guipure lace hard-twisted, but it would not be so salable.

Q. There are laces made of a hard-twisted thread by hand on a cushion by a parchment pattern?

A. I don't say that there were, but I say it can be done—may be done, for all I know.

Q. Are there any such?

A. Well, I must think first. There was a lace called Brussels lace.

48 Q. I don't ask you how many there are, or what they are. I simply ask you whether there are any.

A. I suppose that lace was made of hard-twisted thread.

Q. Do you know of any other?

A. No, sir; I do not. That lace is merely my impression. I have never seen that lace made, but it is my impression that the thread used in making that lace was of a hard twist.

Q. In some laces that are made by hand on a cushion by a parchment pattern and of silk thread, is the thread harder or of a harder twist than others?

A. I said the guipure lace is made by a parchment pattern, but, as I said before, the pattern by which it is made is different, of different thread. The same woman that makes guipure lace can make a thread-lace.

Q. (By the court.) I understand you to say that guipure lace simply differs from what you call thread-lace in the pattern?

A. And in the materfal it is made of.

Q. Of the things that you call thread-lace, that are made by hand on a cushion, and of silk, are there different articles made of dif-
49 ferent grades of twisted thread, or are they all made alike?

A. No, sir; there are coarse threads and finer threads. The finer the thread——

Q. The superior the lace?

A. Not superior. On the contrary, you will find in a fine lace the threads are woven closer together to give the lace a finer appearance and finish.

Q. How many kinds of lace are there that are made by hand on a cushion and by a parchment pattern and of a silk thread?

A. There is the guipure lace and the thread-lace.

Q. Any others?

A. No, sir.

Q. That is all?

A. Yes, sir.

Q. To the extent of your knowledge and experience in the lace-trade, that is all you know of?

A. Do you ask me whether they are made, or whether they have been made?

Q. I ask you to the extent of your knowledge and experience in the lace-business, are there, or are there not, or have there been any others?

A. If you ask me whether there have been, I say there are Brussels laces, to the best of my knowledge, made in the same way.

Q. You have named two, guipure and Brussels.

A. Yes, sir.

50 Q. Are there any other laces made by hand on a cushion of a silken thread than those you have named?

A. There is the "blonde lace," made of a white-silk thread.

Q. By hand on a cushion?

A. By hand on a cushion. That is, the real "blonde."

Q. Are there any other laces made by hand on a cushion of a silken thread?

A. No, sir; so far as I know.

Q. Did you ever hear the term "black thread-lace" used in trade and commerce?

A. I have often heard the term.

Q. Answer my question, yes or no, if you please.

A. I have; yes sir.

Q. When the term "black thread-lace" was used in trade and commerce did you understand by that term precisely what was designated?

A. I had no doubt about it.

Q. Did you ever hear the term "silk laces" used in trade and commerce?

A. Very frequently.

Q. When you have heard that term used in trade and commerce did you understand precisely what particular article was so designated?

A. Yes, sir.

Q. Did the term silk laces describe more than one article?

A. No, sir.

Q. So that when you heard the term silk laces used in trade
51 and commerce, you knew at once what particular article to show?

A. Yes; there is different grades, of course, of the same article.

Q. And when you heard the term "black thread-lace" used, you knew precisely what the article was without referring to the grade?

A. I mean black and white; there is different grades of black thread-laces.

Q. The same as there are different grades of silk laces?

A. No; there are more different grades of silk laces because they are made by machinery and the threads used on the machines are of different characters, but in the real lace there is only one distinction.

Q. What do you mean by "real lace"?

A. Made by hand; they may be very coarse or very fine.

Q. Then you say that there are two kinds of lace; laces called "real lace" and other kinds, are there, that can be so divided?

A. You can divide them that way—real lace and imitation.

Q. Real lace means any lace made by hand, no matter of what material it may be made?

A. Yes, sir; so understood in the trade.

Q. Is there a specific name for every kind of real lace that is made of silk?

A. There is.

52 Q. Is there a specific name for every kind of real lace that is made of cotton?

A. I think so.

Q. Will you please tell me what the specific name is of one of the real laces made of cotton?

A. "Applique lace."

Q. Any others?

A. "Real point-lace."

Q. Any others?

A. "Thread lace."

Q. Any others?

A. "Dutchess lace."

Q. Any others?

A. "Point de Venice."

Q. Any others?

A. "All real white" laces with the exception of Suyand and bed-lace, which are made of flax—all other white laces are made of cotton.

Q. How long have you heard the term "black thread-lace" applied to articles like samples 1 & 2?

A. Ever since I have been dealing in them in this country.

Q. Do you understand that when that term is used it describes that particular article and no other?

A. Yes, sir.

Q. And if a person was dealing in articles like those samples 1 & 2, he would describe them by that name, would he?

A. Well, he would describe them as a thread-lace.

Q. And not as a black thread?

A. If they referred particularly to the black they would say black.

53 Q. I ask you if they were describing those particular articles, whether they would or would not describe them by the term black thread lace?

A. They would, of course, as long as they meant black.

Q. If you were referring to that particular article would you say "black thread-lace" or would you say "thread-lace"?

A. If I wanted to deliver some and they wanted black to distinguish it from the white I would say black.

Q. I ask you if you wanted to distinguish this particular article, sample 1, in trade and commerce from any other known article that is dealt in among merchants, whether in speaking of that you would speak of as a black thread-lace or not.

A. In characterizing it I would speak of it as a "thread-lace."

Q. So that when you want to speak of that article, sample 1, as distinguished from all other articles you would speak of it as thread-lace, and not otherwise, would you?

A. That is a black thread-lace; yes, sir; but I understood that you meant the character of the lace, and then I say it is a black thread-lace. If you mean——

54 Q. I ask you this: If you are referring to this particular article in trade and commerce, describing it by its commercial name, would you or would you not describe it by the name of "black thread-lace"?

A. I would call it "black thread-lace" in order to distinguish it from white.

Q. Why, when you were asked what that article was, did you not say black thread-lace?

A. When?

Q. This morning.

A. Distinguishing it from the other sample, I said it was "black thread-lace."

Q. Why, when you were asked what that article was this morning, did you not say "black thread-lace"?

A. Because it is known as "thread-lace."

Q. When you were asked about this particular article, therefore, you described it fully by the term "thread-lace," did you?

A. I did.

Q. Were you not asked the same question before?

A. Do you mean here in court?

Q. Anywhere.

A. I have had customers ask me for thread-lace, and I have asked them whether they wanted the black or the white?

Q. You have been asked that question before, have you not?

A. You mean by customers?

55 Q. Anybody at all.

A. I don't know what you are referring to.

Q. I am speaking now specifically about this sample goods like that sample, and I ask you if you were ever asked before what was the commercial name of articles like that?

A. I have been.

Q. Did you ever make any other or different answer than you now make?

A. I don't suppose I did.

Q. What is your best recollection?

A. My best recollection is that I always call it "thread-lace," and I could not call it otherwise, because it is a thread-lace.

Q. Were you ever examined before as a witness in respect to goods like sample 1?

A. I was.

Q. Were you or were you not shown goods like sample 1, and asked the question what was the commercial name under which articles like that were bought and sold in New York in the year 1864?

A. Yes, sir; I recollect the time I was asked.

Q. Just answer me yes or no; were you ever asked that question?

A. Yes, sir; I was.

Q. What did you answer to that question?

A. I suppose I said it was a thread lace.

56 Q. Did or did you not answer that it was described here (meaning in New York) as black-thread lace?

A. I may. I recollect there were two patterns, white and black, one Exhibit A and one Exhibit B, and I was asked what was Exhibit A, and having the two together, I said "black thread-lace."

Q. I ask you in respect to goods like that—like sample 1—whether you were or were not asked what was the commercial name under which articles like sample 1 were known in the city of New York?

A. Yes, sir.

Q. Were you asked such a question?

A. Yes, sir.

Q. Did you or did you not answer that it is described here as black thread-lace?

A. I may have said so.

Q. What is you best recollection?

A. I merely want to state that I was shown two samples, one Exhibit A and the other Exhibit B, and I was asked what is Exhibit A, and I said black thread-lace; the other I called white.

Q. Did you or did you not make such an answer in reference to an article like this?

57 A. I did, under the circumstances.

Q. Will you tell me now, why, when you were asked the same question to-day, you made a different answer?

A. I did not make a different answer, because you did not ask me to distinguish it from the white. You merely wanted to show what it is, and I said thread-lace, and such it is.

Q. I did not ask you all these questions, did I? Who was it asked the question to describe here the commercial name of articles like sample 1, the first time in this court?

A. I don't know.

Q. Do you not know that it was not myself?

A. I know I was asked the same question by both sides.

Q. I am asking who first asked you that question. Do you not know that it was not myself.

A. I suppose it was M'r Stanley.

Q. What is your best recollection?

A. I suppose it was either M'r Clarke or M'r Stanley.

Q. And when you were first asked that question, what is your best recollection, if any, of your answer?

A. Unless I was asked to distinguish it, probably I called it

58 thread-lace.

Q. Were you or were you not asked this question: "What is

the article you hold in your hand?" when you held in your hand nothing but a "black thread-lace"?

A. Then I suppose I answered "black thread-lace."

Q. I ask you whether you were asked such a question under such circumstances?

A. I don't recollect. I don't recollect having held one single sample and not the other.

Q. Do you not recollect answering such a question, referring to a black article then in your hand, the question being asked by plaintiff's counsel in a case then on trial, "It is described here as black thread-lace"?

A. I infer by the answer I made that it was a black thread-lace I held in my hand.

Q. Did you make such an answer or not?

A. I don't recollect; I suppose I did.

Q. If you did make such an answer having in your hand a black lace, and no other, and if you did make the answer, "black thread-
59 lace," why is it that this morning when the same counsel, or counsel for plaintiffs, asked you the same question substantially, that you answered "thread-lace," and not "black thread-lace"?

A. He asked me the general commercial name, and I answered it is a "thread lace," and I have never heard it called differently.

Q. I never called it differently. Is that the best answer you can give in explanation of the two answers to which I have now called your attention?

A. Yes, sir.

Q. When you had in your hands, on another occasion, two samples, one a white lace of silk and the other a black lace of silk, were you asked a question as to their names?

A. I want to know whether the one sample—you say I had two samples, one white and one black—whether the white sample was made of silk or cotton.

Q. Do you recollect an instance where two samples on one card were shown you?

A. Yes, sir; I do.

Q. Do you recollect being asked the names of those samples?

A. Yes, sir.

Q. Were they both silk?

60 A. As far as I can recollect, they were not. Those that were marked "Exhibits A and B," unless I am very much mistaken, the black one was silk.

Q. Were you also asked the question as to the commercial name of the black one, and did you or did you not answer "black thread lace"?

A. Yes, sir.

Q. When you were asked the question as to the commercial name of the white one when it was not made of silk, did you or did you not answer "thread lace"?

A. White thread-lace.

Q. (Repeated.)

I don't know; I suppose I did.

Q. What is your best recollection?

A. My best recollection is that I called it a white thread-lace.

Q. Not thread-lace?

A. I may have called it white thread-lace. I know I saw the two, and that, to distinguish between one and the other, I certainly called one "white thread-lace."

Q. Were you or were you not, in respect to the samples that you refer to, that were marked "A 1 and A 2," asked this question, "Did you sell laces similar to these in those years, and in those parts of the
61 country"? referring to San Francisco in 1864.

A. Yes, sir.

Q. Did you not answer that question, "Yes, sir; I suppose I did;" and were you not asked the question, "Under what administration?"

A. Yes, sir.

Q. And did you not answer on the direct examination, "As black thread-lace"?

I may have said so, but I suppose, when I was asked the general character, I called them the other name, the same as I did the white.

Q. Were not both of those samples, A 1 and A 2, that were shown you, black?

A. In my recollection, one was white and the other was black, and they were pinned on a piece of paper for me, similar to those samples that are here to-day.

Q. Was there or was there not shown you upon a card two pieces of lace, both black, one marked "A 1" and one marked "A 2," when you were asked that question?

A. I really don't recollect; I only recollect these patterns. I would not probably, only I made them up myself.

Q. Is there a white lace made of silk, and by hand?

A. There is.

62 Q. What is the commercial name of that article?

A. "Blonde."

Q. That is not "white thread-lace"?

A. No, sir.

Q. What is the difference, if any, between "black thread-lace," and this "blonde lace," that you have spoken of, except in the difference in color?

A. The "blonde" lace is made of a glossy silk. The thread of which it is made is not twisted the same as the black thread-lace is, but it is made of a glossy silk and it is richer generally than the black thread.

Q. Is that silk lace?

A. It is made of silk; yes, sir.

Q. Is that included among the laces which you say are commercially known as silk laces?

A. It is not specially. It is not named by its commercial name in the tariff, so I suppose as such it is taken under the silk clause, at least I never heard differently. It is made of silk; that is all I have got to say.

Q. (Repeated.)

A. It is included in those that are commercially known as silk laces.

Q. By you?

A. No, sir.

Q. Then a "blonde lace," made by hand, of silk, is not among
63 the laces that you mean to describe as silk?

A. No, sir.

Q. You were asked in respect to cotton laces on your direct examination, and I will ask you if "linen laces" is a commercial term?

A. It is not a commercial designation; no, sir.

Q. Did you ever hear of any laces made of linen?

A. I haven't.

Q. When did your firm, to your knowledge, begin to import laces of silk, similar to samples 1 and 2?

A. Oh! They did before I came to this country; ever since I have been in the house, and I suppose before that.

Q. Do you know of any instances where laces like that, imported by your firm have been described by your firm on their entries otherwise than as silk laces?

A. That is something I never paid any attention to; I don't know how they are described.

Q. You don't know of any such instance?

A. No, sir; I don't. I may say that I saw it here at the trial; that one of my invoices was made out in such a way.

Q. (Handing paper to witness.) Is that the signature of Duden Freres?

A. Yes, sir.

64 Q. Is that the invoice accompanying that paper?

A. Yes, sir.

Q. Are there any laces made of silk or made of linen referred to upon that entry or invoice?

A. Yes, sir; there are silk laces.

Q. How are they described upon that invoice?

A. "Guipures noires" and "Dentelles noires."

Q. What is "Dentelles noires"?

A. "Dentelles noires" is the article in question here.

Q. Similar to sample 1, is it not?

A. I suppose so.

Q. How is that package containing that article described upon that entry; where was it included?

A. Under the silk laces.

Q. That is an ent'y of Duden Freres at the custom-house, is it not?

A. Yes, sir.

Q. Has anybody ever told you that you would be asked a question upon this trial as to the commercial name of articles like sample 1?

A. No, sir.

Q. Have you any other explanation to give than what you have testified to as to the circumstance of your answering sometimes that the

65 commercial name of this article is "black thread-lace," and sometimes that the commercial name of the article is "thread-lace."

A. I say, under different circumstances, I have called them "black thread-lace," and I have called them thread-lace; as a class I call them thread-lace, and to distinguish one from the other, I call one black and the other white.

Redirect:

Q Did you, to the best of your recollection, ever testify or intend to testify that thread-lace was the name of a white lace rather than a black one?

A. No, sir, I never did; nor have I changed my ideas or convictions as to laces or their names since the first suit or any suit.

Q. Has blonde lace, in your experience, ever been known as a thread-lace?

A. It never has.

Q. Have real blonde laces, hand-made, been imported within the last ten years?

A. Very few, if any.

Q. (By the court.) If a customer should send to you for a number of samples of thread-lace which would you send him, the white or the black?

A. I would send him both kinds.

66 By defendants' counsel:

Q. Then by that term one particular article would not be specifically described?

A. No, sir.

Q. In order, then, to describe this particular article you have to say black thread-lace, do you?

A. Yes, sir, if you want to distinguish it from the other.

Q. (By M'r Stanly.) If you were asked in regard to these articles (handing sample to witness), both being handed to you, what they were known as in trade and commerce, what would you say?

(Objected to; objection overruled; exception taken.)

A. These are thread-laces.

Q. What would you have said?

A. Thread-laces (referring to the samples B 1 and B 2).

Q. What is your recollection as to that being the identical sample that we had on the other trial?

A. I know these are samples that were used on one of the former trials. I produced them myself, I believe.

Q. One of these is the white thread and the other is the black thread?

A. Yes, sir.

67 (Above samples offered in evidence by plaintiffs. Objected to, admitted in evidence, and due exception taken thereto by defendants.)

JAMES MCMULLEN, called by plaintiffs, being duly sworn, testified as follows:

Q. What is your business?

A. Clerk with Le Bouteller Brothers in this city, at 48 E. 14 st.

Q. Will you be kind enough to state to the court and jury what your experience has been in the lace business?

A. With that firm it is 18 years last September; to go further back than 20 years I don't know very well that I can tell you; nearly 19 years with that firm.

Q. Is the lace business a large branch of their business?

A. Well, laces and embroideries amounts to considerable of their business. I have charge of the laces, embroideries, etc.

Q. The lace department?

A. The lace department; also buy for our Philadelphia house and Cincinnati as well—three houses.

Q. Are you familiar with the different descriptions of lace which are dealt in in this city?

A. I think so; yes.

68 Q. And with their commercial designations?

A. Yes, sir.

Q. Be kind enough to look at these samples 1, 2, and 3, and state, if you know, what their commercial designation has been and is now; what it has been during your connection with the lace business.

A. 1 & 2 is known as thread-lace; No. 3 as thread barbe; the color is black.

Cross-examined by defendants' counsel:

Q. Is "black thread-lace" a commercial term?

A. Yes, sir, when you want black.

Q. How long have you heard the term black thread-lace?

A. As long as I have known what a black thread-lace was, to my knowledge.

Q. How long have you heard the term "thread-lace" used?
A. Well, I cannot remember one without the other, because they both go together.
Q. Did you ever hear the term cotton laces used?
A. In the proper place.
Q. In trade and commerce?
A. In the proper place certainly.
Q. Did you ever hear the term linen lace used?
A. Yes, sir.
Q. In trade and commerce?
A. Yes, sir; that one kind.
Q. Did you ever hear the term silk laces used?
A. Yes, sir.
69 Q. In trade and commerce?
A. Yes, sir.
Q. When the term "silk lace" was used in trade and commerce prior to 1861, what class of goods did it designate?
A. Imitation since 1861, and before it.
Q. What do you mean by imitation?
A. It is made upon a loom.
Q. And did it designate this one?
A. To the best of my knowledge, that is the only name that I have ever heard them called by.
Q. When the term "cotton laces" was used prior to 1861, what class of goods did it designate?
A. There are three or four very common kinds, manufactured in Nottingham chiefly.
Q. I say what class of goods did it include?
A. Nottingham manufacture, chiefly.
Q. Any others?
A. There might be some others; yes, sir.

By the court:

Are those considered imitation?
A. You cannot call them exactly imitation. It is a Nottingham manufacture; we very seldom call them an imitation of anything, merely a cotton lace; properly speaking, that is the term we use commercially.
70 Q. Are they made by machinery?
A. Yes, sir.
Q. Did you ever know of any laces that were made of cotton that were not made by machinery?
A. O, yes, sir.
Q. Were they included in the term "cotton laces"?
A. No, sir.
Q. I asked you the question whether laces made of cotton by machinery were known as cotton laces, and you said yes.
A. I said yes.
Q. Then I asked you if there were any laces that were made of cotton that were not made of machinery which were known as cotton laces, and I understood you to say no.
A. I said no.

By the court:

Q. Describe what you mean by cotton laces.
A. Cotton laces, that is, by the term known commercially, is an imita-

tion lace made by machinery, but there is other laces made of cotton besides, made by machinery, that is not known as cotton.

Q. Those laces are made by hand?

A. Made by hand.

Q. And made of cotton?

A. Yes, sir.

Q. Though not known, commercially, as cotton laces.

A. Not known, commercially.

71 Q. About when was that; how long ago?

A. Since I have been in the lace trade.

Q. Prior to 1861, and as far back as 1846?

A. No, I cannot go back as far back as that.

Q. As far back as 1857?

A. Well, yes, I will go back to 1857.

Q. Are there any laces, or were there any laces that you ever heard of, made of linen, and by machinery?

A. No, I cannot say that there was.

Q. There have been laces, have there not, made of linen, and by hand?

A. Yes, sir, one kind.

Q. Only one kind?

A. That I know of.

Q. Are those known, commercially, as linen laces?

A. There are very little of them in this country.

Q. Were they known, commercially, as linen laces, 20 years ago?

A. I presume they might be.

Q. Were they?

A. I say they might be; I presume they were 20 years ago, yet it is a long time to swear positively.

Q. How many kinds of linen laces were there that were made by hand?

A. One that I know of.

Q. Only one?

A. Yes, sir.

Q. Was that a fine lace?

A. No, sir.

Q. Was that made of a fine thread?

72 A. No, sir, not what is considered a fine thread.

Q. Do you refer to a heavy linen lace now?

A. I refer to a Smyrna lace in the trade.

Q. Is not that a lace that is several inches wide?

A. You may get it one-eighth of an inch wide, and it may run five inches.

Q. Is that the same as Cluny lace?

A. Made by hand or made by machinery.

Q. What is it made of?

A. Made of cotton or linen; they come in under the head of thread.

Q. You have known them to be made of linen?

A. I would not swear positively that I have.

Q. Why did you say there was no more than one?

A. You asked me the question and I answered you.

Q. Now you say there are two.

A. I say there may be. They were passed in as thread.

Q. To the best of your recollection, there was a linen lace made by hand called Cluny, and a linen lace made by hand called Smyrna. How far back? Ever?

A. There has been within the last year or two, I believe. Not at the time the gentleman spoke of.

Q. You never heard of a Cluny lace, then, until lately.

73 A. Certainly I did, many a time; saw them every day in the week.

Q. About how long ago?

A. It might be a year or two. We don't keep those; whenever a thing comes into fashion we get it.

Q. Did you ever hear of Cluny lace prior to 1861?

A. I think not.

Q. Did you ever hear of any other linen laces than those you have mentioned?

A. I cannot say that I did more than a Smyrna, to go back as far as that.

Q. Have you told all you know of laces made of linen?

A. I rather think so, excepting you want to know how they are made. If you want to know I can tell you; if I had a cushion, I could show you.

Q. Made on a cushion?

A. They are; all real laces.

Q. Linen, I am speaking of.

A. Well, real laces.

Q. Have you ever heard laces like sample 1—that is, black thread-lace—called by any other name than black thread-lace?

A. Commercially?

Q. Yes.

A. No, sir.

Q. Will you please name all the kinds of silk laces by their commercial names that you can mention?

A. Commercial designation.

Q. Do you say there is any such distinction including them all?

A. As what?

74 Q. Tell me all the kinds of laces, by their commercial name, that are made of silk?

A. Well, we know them by a great many terms; sometimes we call them by the place they are made in, such as the Calais blonde.

Q. Who is we?

A. The trade, sir. I represent the trade at the present time. There is a lace made in a place called Calais which we call Calais blonde. That is made of silk. There are nets all made of silk; some in England made of silk. If a lady should come to me and ask for a silk lace, I show her an imitation. We have a very few that we designate in the trade as an imitation lace. We have a Calais blonde that we call an imitation.

Q. An imitation what?

A. An imitation black lace made of silk.

Q. Is that the name of it?

A. That is the name of it.

Q. What is the commercial name of that article?

A. "Calais blonde."

Q. That is one name.

A. We set aside the whole of them for Calais blonde, because they are made in that way, although made in England.

Q. Calais blonde is the commercial name of a class of silk laces made by machinery?

A. Yes, sir.

75 Q. Will you please tell me all the kinds of laces by their commercial names that you can mention that are made of silk?

A. Imitation laces are made of silk, some of them; some of them are made of silk and cotton.

Q. That is not what I asked you at all. Please mention by their commercial names all the laces which your experience has given you knowledge of that are made of silk.

A. There is one "thread-lace;" Guipure is another; "Calais blondes." The whole of them are included among imitation laces; white blondes or black blondes, we include the whole of them.

Q. You have white blondes and black blondes?

A. Oh, yes, sir.

Q. Are the white blondes silk?

A. Yes, sir; imitation.

Q. Made of silk?

A. Yes.

Q. Have you or have you not enumerated all the laces that are made of silk that your experience has given you any knowledge of, including the imitation?

A. Except you go into the nets, and those are laces.

Q. Did you ever hear of a Chantilly lace?

A. I have heard the term; yes, sir.

Q. And a Brussels lace?

A. I did.

Q. Spanish lace?

A. Oh, we call those all imitation laces.

Q. Guipure?

A. Yes, sir.

76 Q. Are all these laces "Calais blondes"? A. No.

Q. Are some of them Calais blondes?

A. I mentioned imitation laces, which included Calais blondes, &c. It includes the whole of imitation laces, Guipure and this lace here.

Q. Then you can enumerate but three kinds of laces that are made of silk by their commercial names—Calais blondes, Guipure, and the thread-laces; is that true?

A. And all the imitation laces made of silk.

Q. Does not Calais blondes come from England?

A. It is bought in France.

Q. Then you mean four kinds?

A. I mean all kinds of imitation laces made of silk. Spanish lace is never made in Spain, though that is what the ladies call them.

Q. Then you mean there are four different commercial names by which different kinds of laces made of silk are distinguished?

A. There might be even more than that.

Q. Tell me.

A. I told you blondes; I gave you thread that is made of silk; I gave you Guipure; I gave you Calais blondes, whether they are made in England or in Calais; blondes white, black, Spanish. Then, if

77 you want to go into the nets, I can give you three or four more.

Q. I am asking about laces.

A. Nets are laces.

Q. When you speak of laces you include nets?

A. Commercially, because all come into the lace department; an importer of laces will import nets.

Q. When you speak of blonde laces, do you mean more than one kind of laces?

A. Yes, you can speak of any lace and mean more than one, and can mean two every time, real and imitation.

Q. There are real and imitation blondes?

A. Yes, sir.

Q. When you speak of silk blondes, what color do you mean?

A. I never saw them in colors.

(Question repeated.)

A. I don't think that I mean any color.

Q. What color is meant in trade and commerce?

A. Any color; there is no color to them that I know of except you dye them a color. They come either black or white; that is not a color.

Q. When you speak of a silk blonde lace, what article do you describe, a white one or a black one?

A. Whatever you want.

Q. Do you describe either specifically by the term silk blonde?

A. If I go into a house and want to bring some blondes——

78 Q. Don't give me a contingent answer; give me a direct one.

A. I cannot, if you want to know what color.

Q. When you speak of a silk blonde lace, do you by that term, and that term only, mean to describe an article that is white, or an article that is black, commercially?

A. Both.

Q. So that when you want a black silk blonde you have to mention black silk blonde, do you? You cannot assume the white if you do not call for it specifically?

A. Same answer.

Q. If you say silk blondes alone, you don't know whether you wan't white or black?

A. No.

Q. Which one do they want, if they don't specify?

A. If they don't bring a sample, I would show both.

Q. If you are asked for silk blonde without specifying the color of either?

A. A man that knows his business will show you both.

Q. If you speak of silk blonde and use *not* other term, what color is the lace you describe, white or black?

Neither, without I so mention it.

Q. Then, when you use the term "silk blonde," you do not describe an article that is either only white or an article that is only black?

A. No.

Q. I show you sample 75, and ask you what that is?

A. It is a lace.

79 Q. What is the commercial name of that article, sample 75?

A. Thread lace.

Q. What is it made of?

A. Do you mean the whole or part?

Q. What is it made of?

A. It is made of two materials, I believe; this one is to the best of my knowledge; which do you want to know, the majority? It is made of two materials, cotton and linen together; the majority—well, I may say, nine-tenths of this is made of cotton, and it's a question if there is any linen in it at all.

Q. To the best of your knowledge and experience, then, that sample is made of linen and cotton?

A. *A.* I don't say so; you didn't want to know it.

Q. What is this particular sample made of?

A. The majority is made of cotton, I presume; ninety-nine out of every one hundred parts of it is made of cotton.

Q. What is the rest?

A. There may be a thread of linen, but I would not swear to it.

Q. Is this lace made by machinery or made by hand?

A. Made by hand.

(Sample 75 put in evidence.)

Redirect:

Q. The Smyrna lace of which you have spoken *have spoken*, how is that known commercially? Is it known commercially as a thread-lace?

A. No, sir.

80 Q. Please look at Exhibit B 2 and state whether or not that is made of cotton.

A. Cotton.

Q. Is that known in trade and commerce as cotton lace?

A. Thread-lace.

Q. It is not known as cotton lace?

A. No, sir; certainly not.

CHARLES G. GROTE, called by plaintiffs, being duly sworn, testifies as follows:

I am in the auction business with Townsend, Moutant & Co., 81 Leonard street, dealers in dry goods at wholesale, laces among others. I have been with them since the first of March; I have been connected with the lace business in the auction business since 1862.

Q. With what house were you with before this house?

A. Wilmerding and Mount.

Q. What has been your department in that business?

A. Sale of lace goods.

Q. Are you acquainted with the names under which laces have been bought and sold in this city?

A. Yes, sir.

Q. Look at samples 1, 2, & 3, and state whether you are familiar with that class of goods or not.

A. I am familiar. No. 1 is known as "thread-lace;" No. 2 is known as thread-lace; No. 3 is known as thread-lace barbe.

Q. How extensively have these firms with which you have been connected sold laces at auction?

81 A. They have been making about ten sales a year, possibly from four to five hundred lots each sale.

Cross-examined:

Q. Have you ever examined samples like these before, and been asked that question, as to the commercial name of them?

A. I believe I have and in this court-room.

Q. Take up sample 1; have you ever been asked the question before as to the commercial name of any article like that?

A. I believe I have something similar; I don't know that it is the same sample.

Q. But similar?

A. The same article, that is, made of silk and by hand.

Q. Were you ever asked how they were always spoken of in trade and in commerce before?

A. I believe I have.

Q. Did you not answer to that question black thread-lace?

A. To the best of my knowledge, I may have said so.

Q. Do you recollect being asked the question, "You have always heard these spoken of as black thread-lace, or thread-lace?" and did you answer black thread-lace? Is it true that you did so testify?

A. I believe I did.

82 Redirect:

Q. In your experience in the lace business has thread-lace been designated one color more than another?

(Objected to.)

The COURT. Ask him how he came to state before that they were called "black thread-lace."

Q. How came you to state that they were called "black thread-lace"?

A. Because I had a sample of "black thread-lace" in my hand.

Recross:

Q. Was the article that you were asked about before exactly like that in color?

A. I could certainly not know what sample I then had in my hands. I know this is a thread-lace and it is a black thread-lace, because the color shows it.

Q. The same you had before was the same.

A. How can I retain what sample was shown me before?

JOHN BENNETT, called by plaintiff, being sworn, testified as follows:

Q. What is your occupation?

A. Buying and selling laces with Arnold & Constable; I have been with them about sixteen years.

83 Q. How long in the lace department?

A. Since 1861. They deal largely in laces.

Q. Do you know by what names laces have been bought and sold since 1861, in this market, commercially?

I think I do; yes, sir.

Q. Be kind enough to look at those samples 1, 2, and 3, and state whether you are acquainted with that description of goods.

A. I am.

Q. And, if so, by what names, if any, they have been bought and sold in this market.

A. As thread-lace.

Cross-examined:

Q. Are those silk laces?

A. They are made of silk; not known as such.

Q. There is a large number of laces, is there not, known as silk laces, which are made of silk?

A. There are a number of laces made of silk that have to be invoiced as such, though they are not commercially known as silk laces.

Q. And this is one of them, is it?

A. This is invoiced as such, but it is not commercially known as such.

Q. This is one of those?

A. This is one; yes, sir.

Q. There are at least three or four others, are there not?

A. As I know of, but two others.

Q. There are at least two others.

A. Yes, sir.

84 Q. What is your definition of the meaning in trade and commerce of the term "silk laces"?

A. It means "blonde laces" generally.

Q. In trade and commerce the term "silk laces" is synonymous with "blonde laces," is it?

A. I think it is, to the best of my knowledge.

Q. "Blonde laces" are made always by machinery, are they?

A. They are not; no, sir.

Q. Sometimes they are made by hand.

A. They are.

The COURT. I supposed that "blonde laces" were white laces.

WITNESS. Not always; they are both white and black.

Q. So that as the result of your experience and knowledge the term "silk laces" does not mean in commerce all laces made of silk?

A. It does not.

Q. It means blonde laces which are made by machinery and by hand both, does it?

A. Strictly speaking, it does.

Q. And both colors, does it not, white and black?

A. And the white and black, all blonde laces.

Q. Does it include any other laces made of silk?

A. They are not commercially known as silk laces; blondes are the only laces.

Q. Then it does not include any other lace?

A. Not that I know of.

85 Q. Do you feel sure that it does not include the blonde laces that are made by hand, that is, the real "blonde laces"?

A. Yes, sir.

Q. (By the court.) Do you call all laces real laces that are made by hand?

A. Certainly; yes, sir.

Q. Then some of the blonde laces you call "real laces," do you?

A. We don't generally distinguish them that way; we say "blonde laces." If a customer came and asked for blonde laces, I should probably ask her whether she wanted real lace or imitation.

Q. "Real" is a commercial term?

A. These laces are known, sir, by different terms. "Real laces" would cover all laces that are asked for as "real laces."

Q. Is it a usual term in trade and commerce?

A. It is sometimes used by those that don't understand their business.

Q. You don't advertize "real laces," do you?

A. I don't.

Q. Does the firm?

A. Cannot say. I never saw them advert'zed by that house in that way.

Q. You never saw an advert'zement of "real laces"?

A. I don't say that.

Q. Did you?

A. I think it is likely I did.

Q. What kind of goods were they?

A. How can I say? They advert'zed all kinds of laces. They keep 50 different kinds.

86 Q. What does it mean to you?

A. Well, sir, it means laces made by hand.

Q. What is that (sample 70)?

A. It is imitation lace.

Q. Is that a "blonde"?

A. It is a silk lace.

Q. Is that a "blonde"?

A. It does not come under that head strictly; it may be classed as such, but it does not come under that head generally. It is an imitation thread.

Q. Made of silk, isn't it?

A. Yes, sir.

Q. And by machinery?

A. Yes, sir.

Q. The proper name of that is "imitation black thread-lace," isn't it?

A. No, sir; imitation lace, generally speaking.

Q. What is the difference between this just shown you (sample 70) and sample 1 that you have there?

A. One of these laces is made by machinery and the other is made by hand, both made of silk.

Q. But they are alike in other respects, are they not?

A. They are not alike in any respect as far as the commercial term is concerned. They are both black.

Q. Is the thread in them the same?

A. No, sir; they are not the same quality of thread.

Q. What is the difference?

A. One is a heavier, thicker thread, and one is a light thread.

87 Q. What is the reason, if any that you know of, why sample 70 is called imitation thread?

A. Because it is made by machinery.

Q. That is the reason it is called imitation?

A. Because it is an imitation; they don't call it imitation for that; I don't say so.

Q. Is it a silk lace?

A. Not generally known as a silk lace. It is an imitation lace.

Q. Is it among the class of goods you have referred to as being included within the term "silk laces"?

A. I should say so, to the best of my judgment.

EDWIN W. DISNEY, called by plaintiff, being duly sworn, testifies as follows:

Q. What is your occupation?

A. Salesman. I have charge of the lace department at Mills & Gibbs', 408 & 410 Broadway.

Q. To what extent, in general terms, does that house deal in laces?

A. Over a million dollars a year.

Q. For how many years have you been with them?

A. Since they started, eleven years now.

Q. And how has their business been in quantity?

A. The late years over a million, before that less.

Q. To what extent before that?

A. Between half a million and a million.

88 Q. Before you were with Mills and Gibbs, with what house were you?

A. E. S. Jaffray & Co.

Q. Was your position the same there?

A. The lace department.

Q. Is that a large house in laces?

A. Yes, sir.

Q. How many years were you with E. S. Jaffray & Co.?

A. Between three and four.

Q. And your particular department in that house?

A. Lace department, sale of laces; that was my first experience in business.

Q. You consider that you are acquainted with the names under which laces have been bought and sold in this market for this time that you have specified?

A. Oh, yes, sir.

Q. Please look at samples 1, 2, & 3, and state under what names, in your experience, those laces have been bought and sold.

(Objected to as before stated; admitted; exception taken.)

A. Thread-laces.

Q. Won't you look at No. 3? Has that any more specific name than thread-lace?

(Objected to; admitted; exception taken.)

A. It has a name for the shape.

Q. What is that name?

A. Barbe.

Cross-examined by defendant's counsel:

89 Q. Is the term "black thread lace" a commercial term?

A. It is.

Q. Will you please tell me what is the commercial definition of the term thread-lace?

A. I don't understand the question.

Q. I show you a paper and ask you if you recognize that as the signature of Mills and Gibbs to an entry at the custom-house?

A. It is.

Q. Is that an entry of their firm, representing an actual transaction?

A. I have not personally to do with the custom-house business.

(Entry by the Europe, July 16th, 1868, marked for identification.)

WILLIAM D. MEAD, called by plaintiffs, being duly sworn, testifies as follows:

Q. What is your occupation?

A. Lace business, with E. S. Jaffray & Co. I have been with that house about 20 years in the lace department as salesman and assistant manager of that business.

Q. Have you been connected with sales in that department?

A. That is part of my business, selling goods.

Q. What description of laces has that firm dealt in?

A. All descriptions.

Q. Were you in the lace business at all in any way before that time?

A. No, sir.

Q. You are acquainted with the various descriptions of laces
99 which are bought and sold in this market, with their commecial names?

A. I am.

Q. Will you be kind enough to look at numbers 1, 2, & 3 and state by what name, if any, in your experience in this market, laces like those have been bought and sold?

A. No. 3 is an article that I have never bought or sold one of in my life. I know nothing about those goods; No. 1 & 2 are known as "thread-lace."

Cross examined by defendant's counsel:

Q. Is the term "black thread-lace" a commercial term?

A. It is.

Q. Have you heard the term, thread-lace, used in trade and commerce?
A. I have.
Q. Please give the signification of that term in trade and commerce.
A. It applies to thread-laces, either black or white.
Q. Please explain what "thread-lace" means in trade and commerce.
A. I don't know as I can explain that more clearly, excepting as the name of the lace.
Q. Is it the name of one particular lace or the name of a class of laces?
A. The name of one particular lace and two colors.
Q. You think that when that term thread-lace is used in trade and commerce, it means one particular lace or two particular laces?
91 A. Two particular laces.
Q. Then it represents a class of laces and not a particular lace, that term?
A. Yes, sir.
Q. Then why did you answer me when I asked you first that the term thread-laces des*gi*nated a particular lace—in the affirmative?
A. It des'*gi*nat's a particular lace, but in two colors.
Q. Does it designate a particular class of laces?
A. Yes, sir.
Q. Differing essentially in material & color?
A. Not in color; differing in other ways.
Q. But differing in material?
A. In material; yes, sir.
Q. How many different kinds of thread-lace are there?
A. Two, which are divided into different classes, different qualities.
Q. And each different kind of thread-lace is divided into different qualities, isn't ?
A. Yes, sir.
Q. According to its fineness of manufacture?
A. Differing in quality and the place in which it is made also, and according to pattern.
Q. When did you first know such an article in this country?
A. When I first commenced business, in about 1854.
Q. Did that term at that time describe one article or two articles?
A. The two articles, as near as I can remember.
92 Q. Of what material where those articles?
A. One was made of silk and the other of cotton.
Q. In trade and commerce, when thread-lace was spoken of, would merchants understand that the cotton or the silk one was referred to?
A. It would be hard work.
Q. You could not tell by the mere use of that term thread-lace, could you?
A. No, sir; unless the color was designated, unless it was specified.
Q. If you wanted this particular article like sample 1, it would be specified as black thread-lace?
A. Yes, sir.
Q. Why did you answer when asked on your direct examination as to the name of that particular article that it was thread-lace instead of answering by its specific name as "black thread-lace"?
A. "Thread-lace" with the color added.
Q. Did you ever answer that question differently?
A. I don't remember that I did.
Q. How many kinds of silk lace are there?
A. Five or six different kinds are all that I can think of at present.
Q. No more?

A. There is none that I can think of.

Q. Are those five or six different kind of silk laces distinguished
93 from one another by their respective commercial names?

A. Yes, sir; they are.

Q. Will you please enumerate the commercial names that distinguish these five or six different kinds of silk laces one from the other?

A. There is a black guipure lace.

Q. Was that always spoken of as "black guipure lace"?.

A. Yes, sir.

Q. Is it not simply spoken of as "guipure lace"?

A. Sometimes called "guipure lace," generally "black guipure lace."

Q. Is it not usually called "black guipure lace"?

A. It is; then there is "imitation black guipure."

Q. What is that usually called?

A. Imitation "black Guipure lace."

Q. Name some others.

A. There is "black Calais blondes."

Q. That is the commercial name, isn't it?

A. They are not always called that; generally.

Q. That is the commercial name?

A. Yes, sir.

Q. That is the name by which that article is generally designated—"black Calais blonde"?

A. Yes, sir. Then there is silk lace, which takes in a number of laces.

Q. That is a commercial term, is it not?

A. Yes, sir.

Q. Does it designate one particular lace, or a class of laces?

A. A class of laces.

Q. What is that class of laces?

A. Black blonde laces.

Q. Black silk laces is synonymous in trade with blonde laces, is it?

A. Yes, sir.

94 Q. But it does not mean white blonde laces, does it?

A. No, sir.

Q. It means the black blonde laces?

A. The black blonde laces.

Q. So that if you leave out the adjective of "color," then the silk laces only describe blonde laces in trade and commerce?

A. Yes, sir.

Q. And that is the commercial signification of the term "silk lace," as you understand it?

A. Yes, sir.

Q. Why did you say that there were five different kinds of silk laces known by the commercial names separately?

A. These blonde laces have separate names.

Q. I ask' you how many different kinds of silk laces there were, and you said there were five or six. I want to know why, in answer to my first question as to how many different kinds of silk laces there were, and whether they were known by their respective commercial names, you limited these to five—I think you said—or six.

A. Yes, sir.

Q. We have now arrived at the fourth. You have named the black silk lace as the fourth. You say that is synonymous in trade and commerce with the term "black blonde laces"?

A. Yes, sir.

Q. And then I asked you, "Is the term 'black silk laces' synony-
95 mous with the term 'blonde laces'?" and I understood you to say it was.

A. I think it is.

Q. Why, when I asked you first how many different kinds of silk laces there were, did you not say that all the silk laces were also blonde laces?

A. Well, they are not very often asked for as silk laces, and it may have represented the imitation guipure lace.

Q. I will ask you again if you have accurately enumerated the different kinds of silk laces, so far as you have gone?

A. I think I have, as far as I can think.

Q. You have named "black Calais lace" and black guipure laces?

A. Yes, sir; and the imitations.

Q. And black silk blondes?

A. Yes, sir.

Q. Or black blonde laces?

A. And black Brussels lace.

Q. That is five different kinds of silk laces?

A. Yes, sir.

Q. Is the black thread silk lace a machine-made lace?

A. No, sir.

Q. That is the real lace, made by hand?

A. Yes, sir.

Q. On a cushion?

A. Yes, sir.

Q. By a parchment pattern?

A. I believe so.

Q. And of a silken thread?

A. Yes, sir.

Q. Do people in the trade mean anything different, when they speak of silk laces, than simply laces made of silk?

A. I think not.

Q. Why did you answer that silk laces in the trade means blonde laces, then?

96 A. These represent blonde laces generally, machine-made "blonde laces," or the imitation guipure. We are often asked for silk laces, and we ask a customer what kind of silk lace, and they say blonde, or imitation guipure.

Q. So that in trade and commerce it has a limited signification?

A. I think it has.

Q. Then the term "silk laces," as used in trade and commerce, means something more limited than what ordinary people understand?

A. Yes, sir.

Q. Then it does mean a little something different from simply laces made out of silk?

A. Yes, sir; I think so.

Q. That being the case, why did you say that it did not mean anything different?

A. Simply the name; it means the name of the lace.

Q. What are silk laces?

A. Laces made of silk.

Q. Were you once asked this question on a prior trial, involving somewhat the same question: "Do people in trade mean anything different when they speak of silk laces than laces made of silk?"

A. I don't remember that I was positively.

Q. Do you recollect whether you made any answer to such a question?

A. I do not.

Q. Do you recollect that you were asked a question of that kind, and that you answered, "I think not"?

A. I cannot remember positively.

97 Q. Suppose a man should come to you and ask you, proposing to buy silk laces, would that be a question that would enable you to identify the particular kind of goods he wanted?

A. I hardly think it would.

Q. Would you know exactly what he wanted if he asked for silk lace?

A. No, sir.

Q. Would you not have to ask what lace he wanted?

A. Yes, sir; what style of silk lace.

Q. Laces are dealt in by their particular names, are they not?

A. As a general thing.

Q. Every lace has a particular name, has it not?

A. Yes, sir.

Q. Have you named all the laces that you can that are made of silk by their commercial names?

A. No; the thread lace I have not mentioned—black thread.

Q. The commercial name of that is black thread-lace?

A. Yes, sir; the same as the name of silk guipure is black guipure.

Q. Have you named all the laces made of silk?

A. I think I have, all that I can think of.

Q. (Handing paper to witness.) Is that a signature of the firm of Jaffrary & Co., or the predecessors of the present firm?

A. I think it is.

(Paper marked for identification, being entry by the Adriatic of Jaffray & Sons, May 22nd, 1860.)

98 Q. Is that a signature of Jaffray & Co.?

A. I think it is, sir.

(Entry by the Java, dated Nov. 24, 1869, marked for identification.)

Q. Is that the same? (Handing paper.)

A. It is, sir.

Q. (Hand' paper.) Is that a signature of Jaffrary & Co.?

A. It is.

(Entry by the Nemesis, dated Nov. 12, 1859, marked for identification.)

Similar questions and answers intervening, the following custom-house entries were likewise identified by the witness:

Entry by the Scotia, dated New York, June 13, 1866.

Entry by the City of Paris, dated December 7th, 1869.

Entry by the City of London, dated May 2nd, 1866.

Entry by the Arago, dated January 17th, 1866.

Entry by the Fulton, dated May 14, 1860.

Entry by the Australasian, dated February 2nd, 1863.

Entry by the Russia, dated Nov'r 6, 1873.

99 Q. Do you say that "dentelle noire" is cotton lace?

A. I say that I don't know the meaning of the word; I am not versed in French.

(Entry by the Africa, dated April 13th, 1863, marked after identification; also, entry by the Russia, Nov. 17th, 1869.)

Redirect:

Q. Is "guipure lace" known in trade as thread-lace?

(Objected to; admitted; exception taken.)

A. I think not.

Q. Is Brussels lace known in trade and commerce, and has it been in your experience, known as thread-lace?

A. I think not.

Q. Have any machine-made laces, during your experience in the business, been known as thread-laces?

A. No, sir.

Q. Have any blonde laces been known as thread-laces?

A. No, sir.

Q. Have laces general names and specific names?

(Objected to; admitted; exception taken.)

A. I think they have.

Q. You were not a partner in the house of Jaffray & Co.?

A. I am not.

Q. Were the sales of the house of Jaffray & Co. at wholesale?

A. Yes, sir, exclusively.

100 The following schedule of the amounts and duty paid on the goods covered by this action, and of the plaintiffs' claims in respect thereto, was compiled from the invoices and entries thereof in evidence, and being duly verified, was offered in evidence by plaintiffs.

101 *Lahey & Dubord. Thread-lace, 30 %. Silk lace, 60 % value.*

	Wearing apparel.	Duty.	Other.	Duty.
§ 167. St. Lacerent, Dec. 28, '7...	$54 49—30%	$16 20	$13 76—30 %	$4 20
§ 164. Cimbria, Dec. 9, '72.....	$48 92 "	14 70	$121 83 "	36 60
§ 166. Tresia, Dec. 12, '72.....	$52 64 "	15 90	$198 00 "	59 40
§ 5484. Calabria, Dec. 14, '72.....	$261 03 "	108 30		
§ 169. Cimbria, Jan. 17, '73.....	$22 19 "	6 60		
§ 168. Thuringia, Jan. 14, '73....	.....	.....	$101 18 "	80 30
§ 171. Fresia, Jan. 27, '73.....	$18 60 "	5 70		
§ 77. Cimbria, Feb. 28, '73.....	$1158 67 "	347 70	$1558 49 "	467 40
	.....	$515 10	.....	$597 90

Wearing apparel, $1,716.54, 30 %. Diff. duty, 514.96. Int. 6 %, $67.80.

Other, $1,993.26, 30 %. Diff. duty, 597.90. Int. 78.00.

Exa. Apr. 20, '75.

102 Plaintiffs' counsel then stated that plaintiffs' case was closed, except so far as to identify the various importations in question, with the understanding that the plaintiffs claim on nothing but those goods claimed to be thread-laces; what are spoken of in the bill of particulars or protest as silk or cotton laces are out of the case.

The defendant then called witnesses, who, being sworn and examined, testified as follows:

A. T. STEWART examined for the defendant by Mr. Smith:

Q. You have been engaged in the general importing business of dry goods into this country for how many years?

I suppose I may say forty—thirty and upwards.

Q. And during that time your experience has been large in connection with the class of goods called laces, has it not?

A. It has.

Q. Imported from Europe into this country?

A. Yes, sir.

Q. How far back do you know the article imported into this country under the name of thread-lace?

A. Since I have been in business.

Q. What, going back to the question of your experience, was the article known in trade and commerce as thread-lace, in regard
103 to its material?

A. The article known in trade and commerce as thread-lace was an article made on a cushion, made by hand; manufactured by hand and made on a cushion.

Q. Of what material?

A. It was then, when I commenced business,—I commenced dealing largely in laces, say, in 1835—I think it was partly made of linen thread and partly made of cotton. They were commencing then to put the linen thread in one side and use cotton, which is now, I may say, I believe entirely used. Linen thread is scarcely used at all in the manufacture of laces in the present time.

Q. But the true original lace, the true thread, was of what substance?

A. Made from flax.

Q. It was the thread-lace of commerce?

A. As known to day, the material is cotton. I speak of thread-lace known as thread-lace.

Q. What is the color of thread-lace?

A. White. I ought, I suppose, to qualify that probably, when I say that thread-lace is known as white; there is an article known as black thread-lace as well as white thread-lace.

Q. I am speaking of thread-lace.

A. Thread-lace is white and thread-lace is black.

104 By the court:

Q. I understood you to say that the material which is now known as the thread-lace of commerce is a white article and made of cotton?

A. That is the general name; nearly all lace except one. There is one particular kind of lace that is made in the same way as thread lace is made, made on a cushion, which is black, and which is composed of silk, and the reason why it is called thread-lace is because it is made in the same way that the best lace is made, by hand, and made on a cushion. Therefore, if a lady comes to my store and asks for a black thread-lace, we show her the lace that is known by that name in trade. If she asks for a silk lace, we show her an imitation. There is also real lace made of silk, such as blonde, and there is a lace known as Chantilly lace, that is known in my business as black thread-lace. When a lady wants that article, she asks for black thread-lace. All other laces that I am aware of, made of silk, black, are known as silk laces, but not as thread-laces.

105 By the court:

Q. Suppose a customer of yours should send you an order for an assortment of thread-lace, what would you send?

I would send her white, as a rule, because if she wanted this particular article of Chantilly she would say black, black thread-lace; if she asked for lace, she would be shown white.

Cross-examined by M'r Stanly:

Q. If I understand you correctly now, at the present time those laces which are known in trade and commerce (I am not speaking of the retail trade now but the wholesale trade) by jobbers and importers, in purchase by jobbers and importers, are of two classes, black and white.

A. Yes, sir; though the black is limited to one, I believe; black lace is limited to one particular style of lace, one particular make.

Q. To what extent, at present time, are laces imported into this country which are known as thread-lace, and which are made of linen?

(Objected to by defendant as immaterial and irrelevant; admitted; exception.)

106 A. There are some laces made of linen—common laces; but fine laces, such as Valenciennes lace, are not made of linen thread—not made from flax. There are some laces for trimmings that are composed, I believe, of flax, but I think the quantity is very limited.

Q. There are no laces that are known to commerce as thread-laces that are made of linen to your knowledge?

A. Not that I am aware of; not fine laces such as ladies use.

Q. If I understand you correctly, back as far as 1835 and 1840, there were thread-laces which were at that time made of cotton?

A. Yes, sir; they commenced there about that time to use cotton, I think, in place of linen and flax.

By the court:

I understand you that originally thread-lace was made entirely of flax; then they used cotton with it?

A. No; they substituted cotton for it; the reason, I am inclined to think, for beginning to use cotton was that the ladies found fault with the color. They had to use pure flax, and there was no possibility of making it without a yellowish tint; that is my impression.

Q. The cotton makes a much handsomer lace than linen?

107 Cotton thread can be spun finer I presume.

Q. Silk is not a new article; it has been known for centuries, silk goods?

A. Yes, sir.

Q. And lace have been made by hand of silk for a great number of years, have they not?

A. The article, Chantilly lace has been always made by hand. That is made of black silk, is made by hand, but I don't know of any other that is.

For a great number of years?

A. Yes, sir.

Q. As far back as cotton?

A. I am not prepared to say that.

Q. You are not prepared to say the contrary?

A. I don't know. I don't remember in my early days of seeing any black Chantilly lace.

Q. (By the court.) What are those samples?

That is a barbe; there are a lot of holes here, it is very difficult to tell except I was an expert. This don't look like Chantilly lace. It does not look like it, and from the touch it does not seem like it, but it is a very fine imitation.

Q. Your impression would be that neither of them are Chantilly laces?

A. I cannot say, sir. (After a further examination of the samples, witness continues:) The quality of this is very poor. These are what

are called Chantilly laces; it is difficult to tell, but my impressions
108 are, they are. That is what we call them.

Q. Those are of the class called Chantilly laces, some times?

Yes; but the quality is very poor.

Q. By what particular class of persons are they called Chantilly lace, if any?

A. All parties who wear or use them retail or wholesale. If a party comes to me as a wholesale jobber, or asks me for Chantilly laces, I would know what to show him. If he asked Valenciennes lace, I would know what to show him.

Q. Please state, whether or not those articles that you have stated are called Chantilly laces are or are not black thread-laces as generally known?

A. We know them as black thread-laces.

Q. Which is another name for the same thing?

A. Another name for the same black thread-lace. I understand it to be a Chantilly lace, and only a Chantilly lace.

Q. Chantilly is a French name, is it not?

A. Yes, sir.

Q. It is more frequently called Chantilly on the other side than here, I suppose?

A. I think not.

Q. (By the court.) Is there any cotton lace which is known as a thread-lace?

A. Yes; I think there is. I think some of the common laces
109 made by hand are known as cotton laces.

Q. Is there, or has there been in your experience at any time, any thread-lace which are in color black, and which have been made of any other material than silk?

A. I don't remember of any other.

Q. Do you purchase your own laces. Have you been in the habit of doing that?

A. Not recently.

Q. You have a buyer?

A. Yes, sir.

Q. M'r Connolly is your buyer, I believe?

A. Yes, sir.

Q. He is in Europe at the present time?

A. He left Saturday for Europe.

Q. Do you personally sell any laces?

A. Well, not very often nowadays, except at my other store. I sell everything there.

Q. Will you be kind enough to look at this Exhibit B, at those laces, and state what you would say those laces were if you were asked by one name for the both articles?

(Objected to; admitted; exception taken.)

A. I should say one is "white thread-lace" and the other "black thread lace."

Q. Suppose you wish to distinguish those articles by one name?

A. I think that is hardly supposable; they have two different names.

Q. Why are these black thread-laces called thread-laces in contra-distinction from Chantilly laces?

110 A. This lace is called thread-lace because it is made by hand, and on a cushion, the same as thread-lace is made. The other laces that are made by machinery are not called thread-laces, because they are made by machinery.

Redirect:

Q. Is either of these articles a thread-lace, and nothing else?

A. I should call both those thread-laces, one black and the other white.

Q. Please repeat again to the jury, when simply the term thread-lace, without any adjective, is used, that means what?

A. The general understanding would be that it was a white lace, because the other is designated by the color.

W. H. HARTLEY, called by defendant, being duly sworn, testifies as follows:

Q. You are a stenographer, are you not?

A. Yes, sir.

Q. Do you recollect attending in this court and taking the testimony of Richard Muser, in the case of William Duden et als. vs. Thomas Murphy, on or about November 16th, 1873?

A. Yes, sir.

Q. Did you take the testimony down in short-hand at that time?

A. Yes, sir; without being positive about the date, of course.

Q. Will you please look at the paper shown you and say whether you recognize it as your notes of such testimony, written out in long-hand?

A. Yes, sir.

111 M'r TREMAIN. I offer to read the testimony of M'r Richard Muser to the following effect, in that the witness answered black thread-lace to substantially the same questions he to-day answers thread-lace.

(Objected to unless the whole is read.)

The COURT. The testimony is only competent for the purpose of impeaching the witness.

M'r TREMAIN. It is not a serious contradiction, but it is an explanation, and in part a contradiction. So far as it shows that M'r Muser has changed his opinion in respect to the particular goods that are described by the term "thread-lace," it is a contradiction.

Q. I ask you whether upon the day referred to M'r Muser, in answer to question, "What is the article you hold in your hand, and of what is it composed?" said, "It is described here as black thread-lace," referring to a sample then in his hand?

(The testimony offered was excluded, and defendant's counsel duly excepted.)

112 Q. Do you recollect attending at a trial in this court, in a suit between Jaffrey v. Thomas Murphy, and taking the testimony of Charles G. Grote?

A. Yes, sir.

Q. Do you recognize this as your notes written out in long-hand?

A. Yes; I know the handwriting.

Q. I ask you in respect to the trial that took place in April, 1874.

A. Some time in April; yes, sir.

Q. Do you recollect attending upon a trial, on or about December, 1873, and taking down the testimony of the suit, in this court, between Jaffrey and Thomas Murphy?

M'r TREMAIN. I propose to show that he, Grote, was asked a question and that he gave a specific answer to it, and that he answered differently from the way in which he answered the same question on this trial.

(The testimony was excluded, and exception duly taken by defendant's counsel.)

AUGUSTE FLAURAND, called by defendant, being duly sworn, testified as follows:

113 I am an importer of laces and a manufacturer of laces, in this city, at 554 Broadway, of the firm, Flaurand & Son.

Q. How long have you been in the lace business, and how long have you been familiar with the manufacture of laces?

A. About 30 years.

Q. Formerly in France, and more lately in this country?

A. Yes, sir; I am familiar with the different kinds of silk laces, and the name by which they are known.

Q. Tell me some of the names by which silk laces are known.

A. Chantilly laces, Brussels lace, guipure lace, Spanish lace, and imitation of Chantilly.

Q. What means Chantilly, made by machinery?

A. By machinery.

Q. Do you make the machine-made laces?

A. No, sir; never.

Q. Do you make the real lace?

A. Real lace.

Q. Look at the samples on the desk there, and tell me whether you recognize those; and, if so, which—any Chantilly laces?

A. These are Chantilly laces (indicating plaintiff's samples).

Cross-examined by M'r Clarke:

114 Q. What other name have you known those laces called by?

A. Sometimes people ask for "black thread-lace." That is the same thing in this country.

Q. Chantilly was a name you became acquainted with in France?

A. Yes, sir; and here too.

Q. You did become familiar with it in France, did you not, originally, before you came to this country?

A. In France it is named Chantilly, and here some people ask for Chantilly, and some for black thread-lace.

Q. You never call them black thread-lace?

A. No, sir.

Q. Do you deal in white laces?

A. No, sir.

Q. Did you ever sell any white laces?

A. No, sir.

Q. You never called laces like those thread-laces?

A. No, sir.

Q. Did you formerly have a place of business, No. 26, E. 4th s't?

A. Yes, sir.

Q. (Handing paper.) Look at that bill please. Do you recognize that as a bill from your house?

115 A. No, sir; that is not my hand. I don't know that positively, if that bill is right or not.

Q. Do you recognize the handwriting?

A. No, sir; I think it is the writing, if it belong to me, of a young man I have in my house, an American. That is my invoice, but I don't know if it is a correct bill or not.

Q. Is that the handwriting of a young man in your employ in the year 1871?

A. I cannot tell you positively.
Q. Don't you think it is?
A. Possibly it is.
Q. Didn't you send some goods to the auction house of Wilmerding and Mount about that time?
A. Yes, sir; I don't know if it is that time. I know I sent some goods to Wilmerding and Mount.
Q. Did you furnish that bill?
A. Yes, sir.
Q. Is that the bill that was furnished there for the goods?
A. I don't know if it is exactly that one. I want to refer to my book.
Q. What is your best impression and recollection about it?
A. My best impression is, that house never used the name "thread-lace." The name thread-lace I never wrote myself. If that boy
116 did it, it is possible, I don't know, but not me.
Q. Did you direct that boy, or whoever he was, to make out that bill for those goods that you sent to Wilmerding and Mount?
A. Yes, sir.
Q. Did you not furnish the prices of the goods?
Q. Is that, or not, a bill that was furnished from your house to Wilmerding and Mount?
The COURT. He has said two or three times that he cannot say.
A. I tell you I don't know if it is one exactly. I know I furnished some goods to Wilmerding and Mount, but I don't know if that bill is a correct one or not.
Q. Would an examination of your books show so as to enable you to tell whether this is the bill or not?
A. I suppose so.
Q. Will you go and get your book and compare it and see?
A. I can tell you to morrow morning.
Q. Will you bring your book here?
A. No; I will tell you myself.

By the court:

Q. Is there any kind of lace that is known as thread-lace?
A. In my house?
117 Q. I am not talking about your house; anywhere in this country?
A. Of course.
Q. There is an article known as thread lace?
A. Yes, sir.
Q. What is it; how do you describe it?
A. I understand by thread-lace, a white lace.

By Mr. Clarke:

Q. Did you send any lace to Wilmerding and Mount that was white?
A. No, sir.

By the court:

Q. Do you sell white lace?
A. No, sir; I don't sell white lace.
Q. What kind of laces do you sell?
A. I sell Chantilly, guipure, and Clany lace.
Q. Where do you make them?
A. I make them in Europe, in my country.

By Mr. Tremain:

And import them here?

A. Import them here.

JOHN OFFICER, called by defendant, being duly sworn, testifies as follows:

Q. What is your business?

A. Lace-maker from 15 to 20 years; formerly in England, after that in this country.

Q. Are you familiar with the term in the English language "thread-lace?"

A. Yes, sir.

118 Q. Will you please explain to the jury the meaning of that term and the article which it describes?

A. What I know of thread-lace is, that it is made of linen or flax, a hand-made lace, white. I make imitation on the machines; on lace machines, and sell them; it is not the real. Real thread-lace is made by hand, made of either linen or flax.

Q. Linen is flax, isn't it?

A. Yes, sir.

Q. In a different stage of manufacture?

A. Yes, sir.

Q. I show you two samples marked "L," what are they?

A. Those are thread-lace, hand-made thread.

Q. I show you No. 75, and ask you what that is?

A. It is hand-made lace?

Q. The material, what is that?

A. That is either cotton or flax.

Cross-ex'd by M'r Clarke:

Q. How long have you been in this country?

A. About 8 years.

Q. And what has been your occupation?

A. Lace business.

Q. What particular part of the lace business?

A. Manufacturing.

119 Q. What kind of lace?

A. Spanish, guipure, & blonde; that is about the kinds that I manufacture.

Q. Look at those samples on the desk there, one, two, and three. Have you made lace like those?

A. Imitation of these.

Have you made laces like those?

A. I make imitations of them.

Q. Have you ever made a hand-lace?

A. No, sir.

Q. Have you ever bought and sold laces like those?

A. No, sir.

Q. (Exhibit B No. 2, shown witness.) What is that; what do you call that?

A. I call that a hand-made thread-lace.

Q. What do you say it is made of?

A. Either cotton or flax.

Q. Do you know the commercial terms under which hand made laces similar to those are bought and sold in this country?

A. No, sir.

Redirect

Q. All the laces that you make, which you have specified, are they silk?

A. Yes, sir.
Q. These different laces?
A. Yes, sir.

WILLIAM BARBOUR called by defendant, being duly sworn, testifies as follows:

120 I was in the lace business. I am not in business now.
Q. What was the name of your firm?
A. Cochrane & Co. Cochrane, McLane & Co. succeeded us in the business. I was in the lace business all my business life, from 35 to 40 years.
Q. Are you familiar with the names by which different kinds of laces are described by those who are skilled in the trade?
A. I was more familiar than I am now. I have been out of business for about six years.
Q. But at that time you were?
A. At that time I was.
Q. So familiar that when you heard a specific name mentioned you would have known what particular lace was required?
A. I think so.
Q. Among those skilled in the trade, when a particular lace was wanted, was it usually spoken of by its commercial name?
A. Well, that might be or it might not. I think it is rather a question which it might be difficult to answer. Practically, as a commercial thing, it would be difficult to answer.
121 Q. (By the court.) I suppose it would depend very much upon the party?
A. Very much upon the knowledge of the party asking. He might know a great deal or he might know a very little about it.
Q. As a general thing, what would the distinctions between different kinds of lace mean?
A. Real and imitation.
Q. What would be the other?
A. It would be white and black.
Q. What was the other distinction?
A. There would be thread, guipure, and Brussels.
Q. Those are specific names, are they not?
A. Yes; and Spanish.
Q. Always distinguished with respect to the material of which they were composed?
A. Not always.
Q. Not commercially?
A. I would not like to answer that question without understanding the question a little better.
Q. I ask you whether it was general in commerce to distinguish laces by the material of which they were composed?
A. I should say not always.
Q. That was not a proper commercial distinction?
122 A. No.

Cross-ex'd by M'r Stanley:

Q. Was your house of Cochrane & Co. one of the largest in the city of New York?
A. I think it was, in that particular line.
Q. In the lace business?
A. Yes, sir.

Q. (By the court.) What kind of laces were included in the term "thread lace," as used among merchants?

A. Black and white thread-lace.

By M'r Tremaine:

Q. (Handing paper.) Is that the signature of your house?

A. Yes, sir; that is my signature.

Q. Was that an entry of an actual transaction at the custom-house?

A. Yes, sir; I have no reason to doubt that it was.

Q. Is that the invoice accompanying that entry?

A. Yes, sir.

Q. Please look at the entry where you see the term "silk laces," and look at the invoice, and refer me to the goods that that part of the entry relates to?

A. "Dentell noire."

Q. Can you tell me, by referring to those papers, what kind of goods those were?

123 A. Black thread-laces.

(Entry and invoice produced in evidence, being custom-house entry by China, and invoice accompanying same.)

Q. Were these invoices made out in this country?

A. No, sir; they are Paris invoices.

Q. (By the court.) Who fills out the entries?

A. The entries are made by the custom-house broker; but the importers have to mark each article. I was in the habit of classifying the invoices—what the goods ought to be entered at; but we were never allowed to enter those as anything but silk lace. We were forced to do so.

By M'r Stanley:

Q. In the trade and commerce of this country, in buying and selling, were those articles which were entered there as silk laces—by what name were they bought and sold?

A. Thread-laces.

Q. You were not allowed to enter them at the custom-house as "thread-lace?"

124 (Objected to as incompetent, immaterial, and irrelevant; admitted; exception taken.)

A. No, sir.

(M'r Tremain moves to strike out this answer, stating that the law prescribed how an entry should be made, and such evidence ought not to be received in this case. Motion denied; exception taken by defendant.)

Q. Were articles like Exhibit B—these white and black laces—known to you as long ago as 1840, when you were in business?

A. They were.

Q. When you get to the specific names by which different particular laces are known among those skilled in the trade, do you get to such names as you have mentioned?

A. Yes, sir.

Q. Have you heard the term "black thread-lace" used?

A. Yes, sir.

Q. Will you please look on the desk and tell me whether there is any such articles among the samples?

A. Yes, sir; that (indicating plaintiff's samples) is "black thread-lace;" those are "black thread-laces."

125 THOMAS W. GIBSON, called by defendant, being sworn, testified as follows:

I am an appraiser in the appraiser's department, in the U. S. service.

Q. How long have you been in the appraiser's department; and what class of goods do you have charge of?

A. I have been in the appraiser's department since 1867.

Q. And what class of goods?

A. Laces, ribbons, silks, & trimmings.

Q. What was your experience before that in relation to the lace business?

A. The same class of goods all my life.

Q. Employed in mercantile houses?

A. Yes, sir; wholesale.

Q. And in what cities?

A. Philadelphia and New York.

Q. Are you familiar, from your experience, with the names by which different laces were known by those skilled in the trade?

A. I think so, sir.

Q. Did you ever hear the term "thread-laces" used in trade and commerce?

A. I have.

Q. Did you ever hear the term "Chantilly laces" used in trade and commerce?

A. I have.

126 Q. Did you ever hear the term "black thread-laces" used in trade and commerce?

A. I have recently, not formerly.

Q. Will you be good enough to describe the meaning of the term "thread-laces," the article which that term implies, as early as you recollect?

By the Court:

When people speak of a thread-lace what kind of a lace do you refer to?

WITNESS. They would refer to a white lace, made of flaxen thread.

Q. It was not necessary to mention the color, in order to designate the article, was it?

A. Not at all.

Q. (By the court.) That was lace of flaxen thread?

A. They now make them cotton.

Q. And they are white?

A. They are white.

By the Court:

Q. How long have they been made of cotton?

A. I think about 1835, sir.

Q. Since 1835?

A. Yes, sir; about 1835.

Q. Cotton has been substituted in place of flax since about 1835?

A. Yes, sir.

By M'r Tremain:

127 Q. I show you an invoice and ask you if you find upon that invoice, and upon this entry—being that by the Russia of Nov'b'r 17, 1869, by E. S. Jaffray & Co., identified by a previous witness—any marks or signatures or initials, which enable you to identify it as a transaction at the custom-house—an importation?

(It is conceded that all the entries that have been identified are records of official transactions at the custom-house by the firms who made the entries, and that the invoices accompanying the entries relate to the entries; but plaintiff objects to the competency as mere declarations of third parties.)

Q. Please refer to the case marked "R. J. B. C, 651–B," and tell me how those same goods so marked are described on that entry.

A. It is invoiced as "silk lace."

(Invoice and entries above identified admitted for whatever
128 they may show, it being understood that the invoices *that the invoices* are all made out on the other side—all foreign invoices.

Without setting forth these invoices and entries at length, it is sufficient in this bill of exceptions to state that laces similar to these in controversy were uniformly in the entries specified, covering a period from 1860 to 1873, described thereon by the importers making the said entries at the N. Y. custom-house, as "silk laces," the invoices thereof, of the same packages, varying in phrase, e. g., "Dentelles noire," "Dentelles noire soie," "black thread silk lace," "black thread lace (silk)," etc., etc., etc. See requests Nos. 14 & 15).

By the Court:

Q. In 1861, was there any such article known commercially as cotton lace?

A. Yes, sir.

Q. What was it?

129 A. All machine-made laces; a great variety of cotton laces were known as cotton laces.

By Mr. Stanley:

Q. Commercially?

A. Yes, sir.

Q. And all silk laces made by machinery at the same time were known commercially as silk laces?

A. Certainly.

Q. From 1862 to 1866, you were out of business, I believe?

A. Yes, sir; I was not in any employment at that time.

Q. For the past 13 years you have neither bought nor sold any laces, have you?

A. Not except for private use.

Q. Except for your family?

A. That is all.

The defendant's counsel then called as a witness

JOHN KENNEY, who, being duly sworn, testified as follows:

Q. What is your business?

A. I am in charge of the lace department of A. T. Stewart & Co., retail.

Q. How long have you been familiar with laces and the names by which they are known in trade and commerce?

130 A. About 10 years.

Q. Did you ever hear the name of "Chantilly lace" used in trade and commerce in this country?

A. Yes, sir.

Q. Is it, or is it not, the commercial name entirely?

A. It is not used very often.

Q. Please describe the goods called by that name.

A. It is "silk lace," hand-made.
Q. Are there any such laces on the desk there?
A. Yes, sir; there is what they call thread-lace here.
Q. The same thing as a "Chantilly lace"?
A. I would not call that a Chantilly lace.
Q. It is too poor a quality, is it?
A. Yes, sir.

By the Court:

Q. What is the ordinary name by which these various laces, these samples here, are called in trade?
A. "Thread-laces."
Q. How do you distinguish them from any other kind of laces?
A. I know them by the make—by how they are made, and the material of which they are composed.

131 The plaintiff's counsel then proved that the amount of duties exacted by the collector upon the importations referred to in plaintiff's bill of particulars, which were like samples No. 1 & No. 2, over and above 30 per cent., was $597.90, and the interest thereon from the date of the payment was $78.

The plaintiff's counsel then withdrew all claim in this suit to a recovery upon the importation like Exhibit No. 3.

The foregoing comprises substantially all of the testimony in this case, the evidence being closed.

The defendant's counsel moved that the court direct a verdict for the defendant, and for a separate direction as to all the articles called "barbe or "fichus," i. e., all the things that are not silk laces—a special direction asked for as to them, and then separately as to the

132 articles that are claimed to be "black thread-lace," on the ground that they are shown by the testimony to be just as much silk lace as any other laces can be silk laces.

The COURT. Why did you distinguish between barbes and the others?

M'r TREMAIN. Because they have a well-defind commercial name as barbes.

The COURT. I think I shall have to hold that there is a question of fact for the jury in this case. That question is, whether articles imported by the plaintiffs were thread-laces.

M'r TREMAIN. Or silk laces.

The COURT. Or silk laces; yes. The question is, whether they were commercially known as thread-laces during the period of the legislation of Congress on that subject.

(Defendant's counsel excepts to this ruling and to the refusal of the court to direct a verdict for the defendant as above requested.)

133 Defendant's counsel submitted the following requests to charge, and moved that the jury be instructed in accordance with each and all thereof:

Prayers for instructions.

1. Defendant asks the court to direct a verdict for defendant.

2. There being no conflicting evidence upon the point that the articles in question are silk laces in fact, in character, and general description, it is immaterial by what commercial designation they are known.

3. In this case it must be presumed, until the contrary is shown, that the customs officers have performed their duty, and have assessed a lawful and proper tax upon the plaintiffs' importations, and the testimony under the instructions of the court must satisfy the jury that the tax collected was erroneous before the plaintiffs can recover in

134 this action.

4th. The jury are not bound to give to plaintiffs the benefit of a doubt they may entertain (if any) as to whether they should find for plaintiff or defendant, and to determine their verdict by this method; but on the fair preponderance of testimony the jury must be satisfied that the plaintiffs have made out their case. The burden of proof is upon plaintiffs to make out their case.

5. This action being what is termed an action in assumpsit, brought by plaintiffs to recover back money which they paid to the collector, the burden is upon them to show that the defendant in equity and good conscience (ex equo et bono) is bound to refund the amount which the plaintiffs paid.

6. The law implies no obligation or imputes no promise on the part of the defendant to repay the money sued for in this action, unless
135 the defendant collected it from plaintiffs contrary to his duty or contrary to law, and plaintiffs must make out that it was so collected before they can recover in this action.

7th. The question for the jury in this case is a mixed question of law and fact, in so far as they are to determine whether the goods in question come within the language of the act of 1864 imposing a duty of 60 % on silk vestings, pongees, shawls, scarfs, mantillas, pelerines, handkerchiefs, veils, laces, shirts, drawers, bonnets, hats, caps, turbans, chemisettes, hose, suits, aprons, stockings, gloves, suspenders, watch-chains, webbings, braids, fringes, galloons, tassels, cords, and trimmings.

8th. The clause just recited (silk vestings, pongees, * * laces, &c., &c.), in section 8, act of 1864, followed as it is by the clause, "on all manufactures of silk, or of which silk is the component mate-
136 rial of chief value, not otherwise provided for," 50 %, &c, covers the whole subject of silk in all its variety of forms, and was complete in itself; and articles so comprehended are not dutiable under any prior acts.

9th. The articles in controversy being laces of silk, they were properly assessed at 60 % duty, unless the plaintiffs satisfy the jury by a fair preponderance of evidence that, as a matter of fact, the goods were improperly so classified, and that they were otherwise generally described in this country among those who imported, bought, and sold them; and the burden of proving this rests upon plaintiffs, who must thus make out their case, and, unless they do so, defendant is entitled to a verdict.

10. If the jury find that the articles in controversy are silk laces, they will find a verdict for defendant.

11. If the jury believe that the articles in question are commer-
137 cially known as silk laces, they will find for defendant.

12. If black thread-lace is a particular name for a subordinate kind of silk laces, then if the article was black thread-lace, it was dutiable at sixty per cent., and defendant is entitled to a verdict.

13. The silk laces mentioned in the tariff are not solely those made by hand, or solely made by machinery, but include all silk laces properly so called, however manufactured.

14. It is in evidence that the article in question is an ancient species of manufacture and importation, and there is no evidence to show that since thread-lace was named in the tariff it was ever so classified by the customs officers at this port, or by the merchants in their transactions with the custom-house here; and to this circumstance the jury
138 may give such weight as they may deem proper in considering the testimony relating to commercial usage.

15. A long course of dealing for a series of years betwee n importer

and the officers of the revenue, resulting in a uniform and uninterrupted practice on the part of the appraisers in classifying goods similar to those in question as silk laces, and on the part of the importers in their custom-house transactions in describing the goods on their entries at the custom-house as silk laces, are circumstances that the jury are entitled to regard, and to give them such weight as they may deem proper.

16. The fact that plaintiffs entered the goods in question as silk laces, and that one of them made oath or declaration that their entry was correct, is evidence tending to show that the duty exacted was the correct one, and was in fact a justification to the collector to exact the duty on them at 60 per cent.

139 **17.** Again, the fact that plaintiffs entered the goods in question as silk laces, and that one of them made oath or declared that their entry was correct, is evidence tending to show that the duty exacted was the correct one, and was in fact a justification to the collector to exact the duty on them at sixty per cent., and the mere fact that subsequently to such an entry and description the plaintiffs filed the protest in evidence, and duly brought this action, does not affect the right of the collector to exact duty upon the goods in question according to the description thereof made by plaintiffs on their entry of them.

18. The articles in controversy being confessedly laces made of silk, and so entered by plaintiffs at the custom-house on their importations thereof, were properly assessed at 60 %, and defendant is entitled to a verdict.

140 19. When Congress mentions in one part of an act "thread-lace and insertings," and in another part of the same act, as it did in 1862, mention "cotton laces" and "cotton insertings," the presumption is that it intended to distinguish and did distinguish between the articles thus described by the qualification of cotton and of thread, and this view being consistent with the scheme of the legislation on the subject in controversy in this action, the meaning then given by Congress to the term "thread-lace" is to be deemed the controling one in determining the meaning of the term for the purposes of this action.

20. If the jury believe that the articles in question were not known commercially by the unqualified designation of "thread-lace," and that term described in commercial usage a different lace than plaintiffs', and of linen, cotton, or both, then defendant is entitled to a verdict.

141 21. If the jury believe that the articles in question were prior to, or in 1861, commercially known equally or indiscriminately as "black thread-laces" and "silk laces," then the duty was properly assessed, and they will find for defendant.

22. If the jury believe that laces are generally known as of four different kinds, viz, linen, cotton, silk, and worsted, according to their material, or chief component material, and that the goods in controversy are not included in any of the designations commercially given to laces of linen, cotton, or worsted, but are included by their commercial name among the laces known to be and recognized in commercial usage as silk laces, then they were subject to 60 % duty, and defendant is entitled to a verdict.

23. If the jury believe that the laces commercially known as "thread-lace" are in fact white, unless they are specifically designated as

142 "black lace," and that this designation prevails among importers, traders, and dealers generally in such articles, and did prevail at the time of this importation in 1871, as well as in 1861 and 1864, then, although the articles in question are known commercially as

"black thread-lace," they are dutiable under the act of 1864, at 60%, and defendant is entitled to a verdict.

24. If these goods were indiscriminately known as "Chantilly laces" and "black-thread lace," the defendant is entitled to a verdict.

25. If these laces are distinguished commercially from other laces of silk, by the trade designation of "Chantilly laces," they were dutiable as silk laces, being a subordinate kind of silk laces.

26. If the goods in question are indiscriminately known as "silk laces" and "black thread lace," they were dutiable as silk laces at 60 per cent., and defendant is entitled to a verdict.

143 27. If the jury believe that there is not one particular kind of lace, exclusively known in commerce as "silk laces," then all laces ordinately deemed to be of silk are dutiable at 60 per cent.

28. If the jury believe that from the testimony given that the laces in question are, in plain and unequivocal terms and without ambiguity, included in that clause of section 8 of the act of 1864 that reads, "On silk vestings, fringes, shawls, scarfs, mantillas, pelerines, handkerchiefs, veils, laces, * * * * &c., sixty per cent. ad valorem," then they were properly assessed, and defendant is entitled to a verdict.

144 The court charged the jury as follows:

GENTLEMEN OF THE JURY: I deem it necessary to submit for your consideration only one question, and that is whether the article which was imported by the plaintiffs, and for which they have brought their action to recover, complaining that they were compelled to pay in excess of the duty chargeable upon it, whether that article was, at the time it was so imported by them, commercially known in this country as "thread-lace." Now, we find that as far back as 1846, Congress legislated upon the subject of "thread-lace," and imposed a duty upon it; and we find that in 1861 Congress imposed a duty upon three kinds of laces, "thread-laces," "cotton laces," and "silk laces."

In 1862, the rate of duty was changed somewhat, but the same decription substantially was retained. And then the question arises what did Congress mean by the term thread-laces, or silk laces. Now we see

145 at a glance that a silk lace is made of thread, and a cotton lace is made of thread, and yet Congress did not mean under the term thread-lace to include every kind of a silk lace and cotton lace, probably, because otherwise it would have been unnecessary to have mentioned "silk lace" and "cotton lace," as they did specifically.

Now it is a very well understood principle in the construction of the statutes for the assessment and collection of revenue that the terms used by Congress are deemed to have been used by them in their commercial sense, so that when we find that Congress imposes a duty upon "thread-lace" and upon "silk lace," and upon "cotton lace," we are to understand that Congress intended to impose a duty upon the articles which were commercially known by those several names. Now, was the article imported by the plaintiffs, at the time it was imported, known as thread-lace commercially? If it was, plaintiffs were entitled to recover.

146 Some evidence has been introduced here upon the part of the defense to show that the article known commercially as "thread-lace" was the "white lace." Two, and I don't know but three, of the defendant's witnesses so testified. On the other hand, all the witnesses in this case except those three have testified that the plaintiffs' article was known as thread-lace. Without referring to the testimony of the witnesses on the part of the plaintiff, I simply call your attention to the testimony of two of the witnesses on the part of the defendant upon this

question. M'r Barbour in his testimony states to you that both the white and the black lace made by hand has for many years been known commercially as a thread-lace, and when the two samples introduced here were shown to him, he testified that both of those were expressed commercially by the term thread-lace. The testimony of M'r Kenney, in the lace department of M'r A .T. Stewart, is substantially the same as that of M'r Barbour upon that question. Some testimony
147 has been offered here to show that this article in question, instead of being known as thread-lace commercially, is known as Chantilly lace, or is known as black thread-lace. If it is only known as "Chantilly lace," and is not known generally as "thread-lace," then, because it concededly is made of silk, it is a silk lace within the statute, and subject to the whole duty charged upon it; but if it has been during all the time of this legislation of Congress upon the subject, known as "thread-lace," though sometimes for purposes of convenience described more particularly as Chantilly, or as black thread-lace, then it is liable to a duty of only thirty per cent.

I do not deem it necessary in this case, gentlemen, to divert your attention by alluding to any other question in this case, except, perhaps, I should say to you, and I do charge you that in this case the burden
148 of proof is upon the plaintiffs, and they must establish the issue which they have tendered here by a fair preponderance of evidence.

I have been requested to charge you a great number of propositions that have been submitted. I neither charge nor decline to charge those propositions. In my view they are unnecessary, most of them, to be taken into consideration in the decision of this case, because the question is the simple one to which I have directed your attention. The amount of the excess exacted on the thread lace is $597.90, with interest, $78. If you find the plaintiffs are entitled to recover, you will find, therefore, in that amount.

Defendant's counsel excepts to the refusal of the court to charge specifically in the language of the first request.

Also, specifically to the refusal of the court to charge in the
149 language of the second request.

The COURT. I decline to charge such a multitude of requests.

Defendant's counsel renews the request to charge in the language of the second proposition, stating that he so renews each & all of the requests seriatim.

The COURT. I neither charge nor decline to charge these propositions. It is unnecessary to take any further exception.

M'r TREMAIN. What I want is an exception to your honor's refusal to charge certain of these requests.

The COURT. I have stated that I declined to charge any of the requests, except as already charged by me. To that general refusal you have a right to except. Further than that the court will entertain no exceptions.

To this defendant's counsel excepts, and also to the refusal of
150 the court to charge in the language of each and every of the several requests that are included in the prayers for instructions submitted. Also, separately to the refusal to charge each separate request.

Also to that portion of the charge which stated substantially to the jury that there is but one question of fact for their consideration, and to the statement that that is the simple question whether the article was commercially known as thread lace or not, defendant claiming the only question to be whether the article is silk lace or not.

Also to that portion of the charge which states that Congress did not mean, in the act of 1862, every kind of silk laces and of cotton laces under those terms, or it would not have said "thread lace."

Also to that portion of the charge in which it is substantially stated that the terms used by Congress in tariff acts, are used in their commercial sense, because the court did not limit that proposition to the terms which are used as terms of specific enumeration, but left the
151 jury to apply it to terms of general description.

The COURT. I hold that any propositions, however correct in the abstract, which do not bear upon the question the jury are to decide, should not be submitted to them. For this reason, and because many of your requests are argumentative I have refused to charge your requests.

To which ruling defendant's counsel excepts:

Defendant's counsel also excepts to that portion of the charge where it is stated that all the witnesses, or nearly all, have testified that the plaintiffs' article was known as "thread lace."

Also to that portion of the charge wherein comments are made on the testimony of Mess'rs Barbour and Kennedy, because the comments characterized the testimony.

Also to that portion of the charge, in which it is substantially stated that if the article is known as "thread-lace," although sometimes more particularly as "Chantilly" or "black thread lace," then the
152 plaintiffs were entitled to recover. To that portion embracing substantially that language.

Also to the observations of the court to the *the* jury in the words: "I neither charge nor decline to charge the propositions, because they are deemed unnecessary, etc."

The jury thereupon rendered a verdict for the principal sum of $597.90 in gold coin, and $78 in currency, interest, by way of damages.

On the coming in of the verdict defendant's counsel moved that the verdict be set aside as contrary to law and against evidence, and for a new trial, which motion was denied, and defendant's counsel duly excepted.

And because none of the said facts, evidence, requests, rulings, decisions, and exceptions appear upon the record of the said trial,
153 the counsel for the said defendant have tendered, and the said judge, upon the prayer of defendant, has settled and signed this, as and for the bill of exceptions in this cause, this 23 day of April, 1875, at the said term of said court.

W'M J. WALLACE,
U. S. District Judge, as one of the Judges of the Circuit Court.

(Indorsed:) U. S. circuit court, southern district of New York. Isaiah A. Lahey versus Chester A. Arthur. Bill of exceptions as settled. Filed March 6, 1876.

154 Supreme Court of the United States, of October term, in the year of our Lord one thousand eight hundred and seventy-six.

CHESTER A. ARTHUR, PL'FF IN ERROR,
against
ISAIAH A. LAHEY & JOHN J. H. DUBORD, DEF'T in error.

Afterwards, to wit, on the second Monday of October, in this same term, before the justices of the Supreme Court of the United States at the Capital in the city of Washington, comes the said Chester A. Ar

thur, by George Bliss, his attorney, and says that in the record and proceedings aforesaid there is manifested error in this, to wit, that by the record aforesaid it appears that the judgment aforesaid in form aforesaid given, was given for the said defendants against the said plaintiff, whereas by the law of the land the said judgment ought to have been given for the said plaintiff against the said defendants, and the said plaintiff prays that the judgment aforesaid for the error afore-
155 said and other errors in the record and proceedings aforesaid, as the same appears more fully therein, may be reversed, annulled, and altogether held for nothing, and that he, the plaintiff, may be restored to those things which he has lost by reason of the said judgment.

GEORGE BLISS,
United States Attorney, for the Plaintiff in Error.

(Endorsed:) Supreme Court of the United States. Chester A. Arthur, plaintiff in error, against Isaiah A. Lahey and John J. H. Dubord, def'ts in error. Assignment of error. George Bliss, U. S. attorney, att'y for pl'ff in error. Filed July 19th, 1876.

156 Supreme Court of the United States.

CHESTER A. ARTHUR, PL'FF IN ERROR,
vs.
ISAIAH A. LAHEY AND JOHN J. H. DUBORD,
def'ts in error.

And afterwards, to wit, on the third Monday of October, in October term, in the year of our Lord one thousand eight hundred and seventy-six, the said Isaiah A. Lahey & John J. H. Dubord, by Stanley, Brown & Clarke, their attorneys, freely come here into court, and say, that there is no error, either in the record or proceedings aforesaid, or in the giving of the judgment aforesaid; and they pray that the said Supreme Court of judicature, before the justices thereof now here, may proceed to examine, as well the record and proceedings aforesaid, as the matters aforesaid above assigned for error, and that the judgment aforesaid in form aforesaid given, may be in all things affirmed, &c.

STANLEY, BROWN, & CLARKE,
Atty's for Def't in Error.

STEPHEN G. CLARKE,
Of Counsel for Def'ts in Error.

(Indorsed:) No. 815. 1876. Octo. term, U. S. Supreme Court. No. 815. Chester A. Arthur, pl'ff in error, vs. Isaiah A. Lahey et al., def'ts in error. Joinder in error. Stanley, Brown & Clarke, att'ys for def'ts in error, 16 Wall s't. Filed 21 November, 1876.

157 *Citation.*

UNITED STATES OF AMERICA, *ss:*

To Isaiah A. Lahey and John J. H. Dubord, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October, eighteen hundred and seventy-six, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein Chester A. Arthur is plaintiff and you are defendants in error, to show cause, if any there

be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, this fourteenth day of March, in the year of our Lord one thousand eight hundred and seventy-six.

SAM'L BLATCHFORD.

(Indorsement on cover:) No. 518. Chester A. Arthur, collector of the port of New York, plaintiff in error, vs. Isaiah A. Lahey and John J. H. Dubord. S. New York C. C. U. S. Filed 13th October, 1876.

REC. 518—5

In the Supreme Court of the United States.

OCTOBER TERM, 1877.

CHESTER A. ARTHUR, COLLECTOR, &C.,
v.
ISAIAH A. LAHEY AND ANOTHER. } No. 518.

ERROR TO THE UNITED STATES CIRCUIT COURT FOR SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR PLAINTIFF IN ERROR.

In the Supreme Court of the United States.

OCTOBER TERM, 1877.

CHESTER A. ARTHUR, COLLECTOR, &c.,
v.
ISAIAH A. LAHEY AND ANOTHER. } No. 518.

ERROR TO THE UNITED STATES CIRCUIT COURT FOR SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT.

Lahey & Duboid imported into New York certain laces made of silk upon which the plaintiff in error exacted a duty of 60 per cent. under schedule H of act of June 30, 1864, c. 171, § 8 (13 Stats., 210, & R. S., page 472, § 2504), whereas the importers claimed it to be liable only to a 50 per cent. ad valorem duty, and brought this suit to recover the excess. The statute under which the duty was claimed and assessed is recited in the preceding case upon the docket of this term, No. 517, Arthur *v.* Morrison; while that which Lahey & Duboid said was applicable was the act of March 2, 1861, c. 68, § 20, imposing 20 per cent. as amended by

act of July 14, 1862, c. 163, § 6, adding 10 per cent. (12 Stats., pp. 190 and 550).

The court ruled that these last-cited statutes fixed the duty, and a verdict and judgment thereon were given for the importers. (Record, 61, 4.)

ASSIGNMENT OF ERRORS.

1. The plaintiff in error assigns for error the ruling of the court that the rate of duty was determined (at 30 per cent.) by the acts of March 2, 1861, and of July 14, 1862, instead of by that of July 30, 1864; and the judgment rendered upon the verdict obtained under this ruling. (Record, 61 and 4.)

2. The ruling of the court that it was a question of the commercial designation of the article imported. (Record, 58; end of folio 132 and folio 133, and page 62, bottom.)

3. The refusal to direct a verdict for the defendant (*Ib.*, and folio 133.)

4. The refusal to give the eighth requested instruction, or anything equivalent thereto, to the effect that section 8 of the act of June 30, 1864, c. 171, covered the whole subject of silk goods, and that recourse could not be had to prior acts (Record, 59; ¶ 8th), and the instruction to the contrary. (Record, 61; folios 144 and 145.)

5. The refusal to give the tenth requested instruction. (Record, 59.)

6. The refusal to give the twelfth requested instruction. (*Ibid.*)

7. The refusal to give the thirteenth requested instruction. (*Ibid.*)

8. The refusal to give the eighteenth requested instruction. (Record, 60.)

9. The refusal to give the nineteenth requested instruction. (*Ibid.*)

10. The refusal to give the twenty-second requested instruction. (*Ibid.*)

11. The refusal to give the twenty-seventh requested instruction. (Record, 61.)

The view taken by the government has been in part indicated by the argument in the preceding cause, and is deemed to be in harmony with the declaration of this court in Smythe *v.* Fiske (23 Wall., 381, top). It is there said that the tariff of June 30, 1864, c. 171, § 8, was intended to embrace every article made of silk; that the concluding, sweeping clause, laying 50 per cent. upon all manufactures of silk, &c., not otherwise provided for, meant not otherwise provided for by the preceding language of that section; because the section, as a whole, was intended to embrace every article of which silk was the component of chief value. It declared that preceding statutes were not to be consulted to ascertain the duty upon any article of this material. Hence the ruling of the district judge, that recourse could be had to the enactments of 1861 and 1862 to determine the duty payable upon lace composed wholly of silk, by whatever name known to the trade, was in conflict with the decision of this court, and cannot be sustained.

Reference to the Revised Statutes shows that this construction and the position assumed by the district attorney upon the trial of the present case are correct, as agreeing with the legislative intent. As argued in the Morrison case, the act of June 30, 1864, c. 171, did classify articles according to the *material* of which they were made, putting all made of silk into one schedule, &c., &c. Though "thread laces, and insertings" are specified in the acts of 1861 and 1862, *ubi sup.*, the purpose to designate only lace made of something other than silk (as contended by the government below) is evinced by the arrangement of the revision which puts this item into the

"Schedule C, hemp, jute, and flax goods," R. S., 466. (See testimony of Gibson, Record 56, middle.) The fact that "cotton laces," "worsted laces," and "thread laces" are mentioned in the acts of 1861 and 1862, shows that by the latter term were meant linen laces, as now scheduled in the revision, *ubi sup.*

EDWIN B. SMITH,
Assistant Attorney-General.

S. Hamilton's Son, Printer, 61 Cedar Street, N.Y.

U. S. Supreme Court.

CHESTER A. ARTHUR, Collector, &c., Plaintiff in Error,

against

ISAIAH A. LAHEY, *et al.*, Defendants in Error.

No. 518.

BRIEF FOR DEFENDANTS IN ERROR.

STATEMENT.

Defendants in error imported in the years 1872 and 1873, certain merchandise from Havre, on which the Collector exacted a duty of sixty per cent., *ad valorem*.

Defendants in error claimed that a portion of the articles so imported were articles known in the trade and commerce of this country as *Thread Laces*; that as such they were subject to a duty of only thirty per cent., and proved on the trial that the amount of the duties exacted by the Collector upon the importations referred to in the bill of particulars over and above thirty per cent. was $597.90 (fol. 131), for which they had a verdict.

It was proven by an overwhelming weight of testimony, by a large number of the very first merchants in New York, by most of the witnesses of plaintiffs in error, as well as by a great number of witnesses for defendants in error, that the article imported by the defendants in error, was universally known in the trade and commerce of the country as "thread lace;" and the jury so found. (Record, fol. 152.

The testimony showed that at the time of these importations, and long prior thereto, thread lace was of two colors, white and black, the white made of cotton, the black made of silk. This was proven by Barbour, a witness for plaintiff in error, who was for forty years a member of the *largest lace house* in New York. (Record, fol. 122).

Also by A. T. Stewart, a large importer, a witness also for plaintiff in error, as well as by all of the witnesses for the defendant in error (fol. 103).

Mr. Barbour, a witness for plaintiff in error, said that laces "were not distinguished commercially by the material of which they were composed" (fol 122).

The witnesses testified without contradiction that there were two kinds of laces known commercially for thirty years as thread lace, one black, made of silk, one white, made of cotton. That both were made of a hard twisted thread, of silk or cotton, by hand, on a cushion. That laces had been made a great many years by machinery of silk, which were known commercially as silk lace, and so bought and sold. That there were also laces made for many years which were known commercially as cotton laces, which were made by machinery out of cotton (fol. 129), but none of these known commercially either as cotton laces or as silk laces were known commercially as *thread laces*. The main question litigated below was whether the articles imported by plaintiffs were or were not known commercially as thread lace.

It further appeared from the testimony of all the

witnesses, that practically, no lace made of any material except silk and cotton, was known or had been known for years prior to the passage of the Act of 1861 as thread lace, and these laces are not known in trade either as silk laces or as cotton laces (Record, fols. 40, 42, 45, 52, 63, 71, 72, 79, 103, 106, 109, 126).

The claim of the defendants in error was that their goods, being commercially known as thread laces, were dutiable, under the Acts of 1861 and 1862, at the rates prescribed by those acts, viz., thirty per cent. while the plaintiff in error contended that the laces in question, being made of silk, were dutiable at sixty per cent. under the 8th section of the Act of 1864.

POINTS.

Before entering upon a discussion of the questions directly involved, we ask the attention of the Court to a statement of the statutes imposing duty upon laces, either by their component materials, or commercial designations; and to other statutes deemed to be material.

The tariff Act of 1792 (1 stat. at large, 259), imposed a duty of ten per cent. on "laces."

The tariff Act of 1816 (3 stat. at large, 310), imposed a duty of seven and one half per cent. on "gold and silver lace."

The tariff Act of 1824 (4 stat. at large, 25, 27), imposed a duty of twenty-five per cent. on coach laces of cotton, and on all other laces twelve and-a-half per cent.

The general tariff Act of 1846 (9 stat. at large. 427) imposed a duty of thirty per cent. on the articles enumerated in schedule C, and a duty of twenty-five per cent. on the articles enumerated in schedule D, and a duty of twenty-five per cent. on the articles enumerated in schedule E.

Schedule C enumerated "galloons, laces, knots, etc., etc., of gold, silver or other metal."

Schedule D enumerated with a great variety of other articles "cotton laces," (p. 46;) also specified "manufactures wholly of cotton not otherwise provided for, and specified "manufactures of silk or of which silk shall be a component material not otherwise provided for," p. 46.

Schedule E enumerated, with a great variety of other articles, "thread laces," *eo nomine*, (p. 46).

The tariff Act of March 3, 1857 (11 stat. at large, 192), provided that in lieu of the duties then existing there should be imposed upon the articles in schedule C, D, and E of the tariff Act of 1846, the duties of twenty-four per cent., nineteen per cent., and fifteen per cent., respectively.

The Act of 1846 had imposed a duty of thirty per cent. on the articles enumerated in schedule C, and a duty of twenty-five per cent. on those enumerated in schedule D, and a duty of twenty-five per cent. on those in schedule E. The duty, therefore, on "laces" in schedule C, was reduced from thirty to twenty-four per cent., and the duty on "cotton lace" was reduced from twenty-five to nineteen per cent., and the duty on "thread lace" was reduced from twenty to fifteen per cent.

The tariff act of March 2, 1861, (12 stat. at large, 178) imposed in section 16, p. 186, a duty of thirty per cent. on a variety of articles, and among them on "silk laces" *eo nomine*, and also "on all other manufactures of silk or any of which silk was the component material of chief value not otherwise provided for" thirty per cent. (p. 186) and in section twenty a duty of twenty per cent. on a great variety of articles, and among them cotton laces *eo nomine*, (p. 189,) and on "thread laces" *eo nomine*, (p. 190,) and in section twenty-two, a duty of thirty per cent. on a great variety of articles, and among them "cotton laces colored" (p. 191) and in the same section a duty of thirty per cent. on manufactures of silk or of which silk shall be a component material not otherwise provided for, (p. 192).

The tariff Act of August 5, 1861, (12 stat. at large, 293, § 2) imposed a duty on "silk laces" *eo nomine*, and "on all other manufactures of silk or of which silk shall be the component material of chief value not otherwise provided for" of forty per cent.

The tariff Act of July 14, 1862, (12 stat. at large, 559) imposed an additional duty of ten per cent. on a variety of articles, and among them on "thread lace" *eo nomine*, (§ 6) and also an additional duty of five per cent. on "cotton laces" *eo nomine*, (§ 13, p. 556.)

The tariff Act of June 30, 1864, (13 stat., p. 202,) provided that in lieu of the duties heretofore imposed by law "*on the articles hereinafter mentioned*, there shall be levied, &c. on the goods, wares and merchandise *enumerated and provided for* in this section, the following rates of duty" on some twenty-seven articles being a part only of the articles in common use, which are made of silk, and among them on silk laces, *eo nomine*, sixty per cent., (p. 210).

The next clause is as follows:

"On all manufactures of silk, or of which silk is the component material of chief value, fifty per cent.," p. 210.

The same Act, by section 22, provided that all Acts and parts of Acts *repugnant to the provisions of this Act* be, and the same are hereby repealed, * * * * "and provided further, that the duties upon all wares and merchandise imported from foreign countries *not provided for in this Act*, shall be and remain as they were according to existing laws prior to the 29th April, 1864." (*Ib. p.* 216).

The Act passed June 22d, 1874, "To revise and consolidate the Statutes of the United States, which were *in force* on the first day of December, 1873," classified laces as "cotton laces colored," twenty-five per cent., (p. 464), "cotton laces" thirty-five per cent., "thread lace," thirty per cent., (p. 466,) silk "laces," sixty per cent., (p. 472), and contained the

same provisions of the Act of 1864 relative to manufactures of silk, not otherwise provided for, as those of the Act of 1864.

The Act of June 20, 1874, (18 Stat. at Large, 113), provided (§ 2), "that the Secretary of State shall cause to be completed the head notes of the several titles and chapters, and the marginal notes refering to the statutes for which each section was compiled and repealed by said revision," &c.

Title seventy-four of the Revised Statutes, p. 1091, provided as follows, section 5,595: The foregoing seventy-three titles embrace the statutes of the United States, general and permanent in their nature, in force on the first day of December, one thousand eight hundred and seventy-three. * * * * * *. All Actsof Congress passed prior to said first day of December, one thousand eight hundred and seventy-three, any portion of which is embraced in any section of said revision, are hereby repealed, and the section applicable thereto shall be in force in lieu thereof; all parts of such Acts not contained in such revision, having been repealed or superseded by subsequent Acts, or not being general or permanent in their nature.

The Statute of February 8, 1875, (18 Stat. at Large 307,) provided as follows: "From and after the passage of this act, in lieu of the duties heretofore imposed on the importation of the goods, wares and merchandise hereinafter specified the following rates of duty shall be exacted:" on various articles enumerated certain specified duties and then the statute was as follows: "On all goods, wares and merchandise not otherwise herein provided for, *made of silk* or of which silk is the component material of chief value, *irrespective of the classification thereof for duty by or under previous laws or of their commercial designation*, sixty per cent. *ad valorem*."

The collector's sole authority for the exaction of sixty per cent. on thread laces, which was in 1872 and 1873 was the provision of the Act of 1864, laying a duty of sixty per cent. on "silk laces."

ARGUMENT.

I.

We may assume as postulates:

1st. That the record establishes beyond controversy that articles like those on which the duty complained of was exacted had been known in the trade and commerce of this country from a very early period, and for at least thirty years anterior to the importations in question as thread lace (see testimony of William D. Mead, Record, fol. 89).

A. T. Stewart, a witness for plaintiff in error, (Record, fol. 107); William Barbour, also a witness for plaintiff in error, (Record, fol. 124), the last witness knew articles like the importations as thread lace in 1849.

The verdict, under the instructions of the Court, is conclusive upon this question of fact.

2nd. That at the date of the importations in question thread laces, *eo nomine*, were subject to a duty of thirty per cent., to wit, twenty per cent. under the Act of March 2, 1861, and ten per cent. additional under the Act of July 14, 1862.

3d. That the exaction of sixty per cent. on the lace in question can only be justified under that clause of the Act of 1864, which imposes that rate of duty upon silk laces, *eo nomine*.

4th. That while these laces were in fact made of silk, they were not commercially known as silk laces.

That the evidence showed, without contradiction, that some thread laces were made of a cotton thread, and that some thread laces were made of a silken thread. That both were made of a hard twisted thread, by hand, on a cushion; that those made of cotton were white, and those made of silk were black.

5th. That there were many descriptions of lace made of a soft silken thread by machinery which were known in trade and commerce as silk laces.

6th. That there were laces made of cotton not known as thread, which were known in trade and commerce as cotton laces.

7th. That there had not been in use for many years thread lace so known made of flax cotton having been substituted as early as 1835

8th. That laces had been classified for duty under many acts previous to the Act of 1864 by the same specific names as those by which they were designated in the trade and commerce of the country, to wit, as silk laces, cotton lac s, and as thread laces; that these distinctions had been emphasised by separate and different rates of duty, and that they all re-appear in the Revised Statutes.

It is also to be observed that the wording of that part of the section of the Act of 1864, imposing the duty of sixty per cent. was imposed in lieu of duties upon certain specified articles, to wit, on silk vestings, &c., &c.. And that the prior acts also specify silk laces in similar connection. Thus the Act of August 5, 1861, imposed a duty of forty per cent. on silk laces, *eo nomine*, and the general Tariff Act of March 2, 1861, covering nineteen pages of the Statute, imposed a duty of thirty per cent. on silk laces, *eo nomine*. The Act of March 2, 1861, also naming thread laces, and imposing a different rate of duty from either cotton or silk laces.

The Act of 1861 distinguishes explicitly by name and by a different rate of duty thread laces from silk laces and from cotton laces. A distinction also found in the earlier acts.

Says Mr. Justice Hunt, delivering at this term the opinion of the Court in Movitt *vs.* Arthur, (No. 82).

"It is a general rule, in the construction of Revenue Statutes, that specific provisions for duties on a particular subject are not repealed or affected by the general words of a subsequent statute, although the language is sufficiently broad to cover the subject first mentioned."

And in this opinion the cases of Homer *vs.* The Collector, 1 Wall. 486, and Reiche *vs.* Smythe, 13 Wall. 162, are cited with approval.

But in order to make the articles in question, known commercially as thread lace, and thus within that dutiable category liable to the duty exacted, is it not necessary for the Court to overturn this well settled rule so recently reaffirmed, and that the word silk laces mean in the Act of 1864 something more and different than those words meant in the prior acts. We submit it to be clear that under the Acts of 1861 and 1862, prior to 1864, the article in quetion would have been dutiable as "thread lace."

To hold otherwise would overturn the long line of decisions in respect to interpretation according to commercial usage and signification.

See two hundred chests of tea, 9 Wheat. 430.
Barlow *vs.* U. S., 7 Pet. 404.
United States *vs.* 112 casks, 8 Pet. 277.
Elliott *vs.* Swartwout, 10 Pet. 137.
Curtis *vs.* Martin, 3 How. 106.
Lawrence *vs.* Allen, 7 How. 785.
Arthur *vs.* Cumming, 91 U. S., 362.
Tyng *vs.* Grinnell, 92 U. S. 467.

In this latter case Mr. Justice Clifford says, (page 470:) "Suffice it to say, without multiplying authorities, that the rule of law is settled; that the question, whether an imported article is or is not known in commerce by the word or terms used in the act imposing the duty, is a question of fact for the jury, and not a question of construction."

Clearly, then, under the acts prior to 1864, whatever article as matter of fact was commercially known as "thread lace," was liable to the duty prescribed by that enumeration in the statutes, and to no other. It being found as matter of fact that the article here in question was thread lace, we submit that by no possibility of construction could a greater duty than thirty per cent. be imposed, notwithstanding the provisions in those statutes for duty upon silk laces.

Can, then, the words "silk laces." in the act of 1864

have a broader signification than that to be properly applied to the same words in the earlier acts?

The act itself does not anywhere declare that the language used in it is intended to be used in a different sense from that in which it had been used in prior acts, and the Court will not presume that Congress, in the absence of expressed intention, intended that the words of that act should be used in a different sense from that in which they had been used in prior tariff acts. On the contrary, if such had been the intent of Congress, it is to be presumed that it would have so provided.

And also, so far as appears, the terms thread lace, cotton lace and silk lace, have had the same commercial signification and meaning for many years.

Again, the statutes adverted to having distinguished thread lace from silk lace and thread lace from cotton lace, by enumerating them by distinct names and by imposing on them under such names different rates of duty, are a legislative declaration and construction, and that those terms are intended to apply to different articles and to designate different articles, and the Congress of 1864 must be deemed to have used them in the same sense as that in which they were used in the prior enactments.

If it had been intended by Congress, in the Act of 1864, to have repealed the existing duties on thread laces which were made of silk, and on thread laces which were made of cotton, there should surely have been an explicit provision to that effect.

Not only is there no explicit provision in the Act of 1864 repealing the existing duties on thread lace, but the act carefully provides the contrary, and reaffirms the duty on them.

1. In section eight it imposes the duty of sixty per cent. on certain articles hereinafter mentioned, and on these only, and it does not mention thread lace.

2. It provides affirmatively in section twenty-two that it repeals only acts and parts of acts which are repugnant to the provisions of this act. It is simply absurd to say that a provision imposing a duty of sixty per cent.

on silk laces in the Act of 1864 is repugnant to a provision in the act of 1862 imposing a lesser duty on thread lace, particurlary as the earlier statutes had provided for silk lace and thread lace each by name. The one provision is not repugnant to the other, because there was an article of lace which was not thread lace which was made by machinery out of silk, which was known commercially as silk lace, when this act of 1864 was passed, and which paid a duty of forty per cent. under the act of August 5, 1861, to which articles the word silk lace fittingly applied.

The article was nniversally known in trade and commerce as silk lace so there was no necessity that the word silk lace should be extended to thread laces made of silk in order to give the words effect. The act of 1864 imposing a duty of sixty per cent. on silk laces undoubtedly was repugnaut to, and repealed the clause imposing a duty of forty per cent. on silk laces in the Act of August 5, 1861.

Again, if the words silk lace, in the Act of 1864, are repugnant to the words thread lace in the Act of 1862, then the words silk lace in the Act of 1861 are repugnant to the words thread lace in the same act; but Congress evidently considered that the words silk lace in that act were not repugnant to thread lace in the same act, else Congress is chargeable with the grossest stupidity. But the facts and the verdict show that commercially thread lace and silk lace are entirely different articles, so that there is no basis for so grave a charge.

This fact that thread lace and silk lace are commercially entirely different articles, sustains the harmony of the statutes.

If the words thread lace and silk lace were used by Congress in their enactments in their commercial sense according to the just and well settled rule, then there is no repugnancy between the terms silk lace and thread lace because they designate entirely different articles and the provisions of the Act of 1861 and 1862, as to thread lace are not affected by the Act of 1864. It is also a well settled rule that statutes are not to be construed to

be repugnant if it is possible to give effect to both. One part of a statute must be so construed by another that the whole may if possible stand *ut res magis veleat quam pereat*, and this says Story is merely a rule of common sense.

Dwarris on Stat., 189.
Sedgwick on Statutes, 127, 126.

This rule applied to the Acts of 1846 and 1851 and 1864, confirms the position that the terms thread laces and cotton laces and silk laces were in fact used by Congress in their commercial sense.

In this connection we repeat it is settled, that if an Act of Congress imposes a duty on an article designated in the tariff by a specific term, or if Congress exempts an article designated by its specific term from duty, the former is not made free from duty nor the latter dutiable, by the use of general terms in a subsequent Act although those general terms may be broad enough to include the specific article except for such prior distinctive designation.

Homer *vs.* The Collector, 1 Wall., 486.
Reiche *vs.* Smythe, 13 Wall., 162.
Morris *vs.* Arthur, cited *supra*.

The case of Homer is entirely in point with the case at bar, and Mr. Justice Davis giving the opinion in Reiche *vs.* Smythe, cites it with approval, and says it is fair to presume in case a special meaning were attached to certain words in a prior tariff Act, that Congress intended they should have the same signification when used in a subsequent Act in relation to the same subject matter. In harmony with this is the opinion of Judge Blatchford in 6 Bales Hair 2 Ben. cited 6 479.

The Revised Statutes keep up by express designation all the distinctions in specific names of laces that appeared in the prior statutes, and impose on thread lace, on silk laces, and on cotton laces, and cotton laces colored, different rates of duty, and the same rates to which they were subject as we claim under the previous acts specified, to wit: on cotton laces and cotton laces colored thirty-five per cent, Revised Statute 464; on

thread laces thirty per cent, Ib. 466 ; on silk laces sixty per cent., Ib. 472.

This is a legislative declaration that by law, thread laces, silk laces, and cotton laces, were dutiable by there distinct appellations, and at these rates of duty were imposed by law on the first day of December, 1873, and if so, they were so dutiable at the time of the importations in question.

Smythe *vs.* Fiske, 23 Wall, 382.

The circumstance that thread laces are by the statute classified, and arranged either by the Secretary of State, or by the revisors in the revision under the title of hemp, jute and flax goods, does not warrant any inference or presumption that a legislative construction is intended by reason of the title under which the particular section is placed.

Rev. Stat 1,090, Sec. 5,600.
18 Stat. at large, 113, Sec. 2

At this point it is to be observed that the same rules of construction, or rather the same process of reasoning which reverses all rules of construction, applied to thread laces of cotton, which the Court is asked by the plaintiff in error to apply to thread laces of silk, would bring all thread laces of cotton under the duty imposed upon cotton laces.

There would then be practically no importations to which the term thread laces could be applied. But this construction would overturn the whole practice of the Treasury Department, and the theory of the Government on the trial of this case, viz. : that the thread lace of commerce was made of cotton and was white.

Of course the term thread lace can be as properly applied to a lace made of a silk thread as to one made of cotton, and this without regard to distinction of color.

As to a final consideration on this point, we suggest that Congress, by the Act of February 8th, 1875, (U.S Stat. at Large, 307,) in changing the duty on such thread laces as were made of silk, and the rates of duty on various other articles, expressly recognized the fact, that the classification of them for duty under existing laws

was to be determined by settled rules of constructing, and according to commercial designations.

This statute is, in other words, a distinct legislative recognition of the fact, that there were terms in the previous enactments upon the subject of silk goods which were used in their commercial sense, and that the rule of construction that a classification by specific designation under previous acts is not affected by general clauses under subsequent acts, so far as those rules related to goods made of silk.

II.

Thread lace was not subject to a duty of fifty per cent. under the last clause of section eight of the Act of 1864.

Smythe *v.* Reiche, 13 Wall. 162.
Homer *v.* The Collector, 1 Wall. 486, and cases *supra* on commercial designation,
Act of Congress, February 8th, 1875.

The same considerations that show that by the settled rules of construction, thread lace is not dutiable as silk lace, still more forcibly lead to the conclusion that the specific duty on thread lace *eo nomine* cannot be construed to be repealed by the much more general terms of description under which a duty of fifty per cent. is imposed on all manufactures of silk, or of which silk is the component material of chief value.

To so hold, is to overrule all the cases in the Supreme Court, relating to the rule of classification for duty under previous laws are to explain away and repudiate the legislative construction found in the Revised Statutes, and in the Act of Congress of February 8th, 1875.

To so hold under the facts in this case would be to overturn the settled law in regard to the construction on statutes on the question of repugnancy.

To so hold would be to overrule the numberless decisions that revenue statutes and all other statutes in *pari materia* are to be construed as a whole.

III.

The case of Smythe *vs.* Fiske is relied upon by the government as conclusive upon the question of error in the Court below in ruling that under any circumstances reference could be had to the Acts of 1861 and 1862, to determine the duty payable upon lace composed wholly of silk.

Some observations upon this decision and the calling attention to some considerations not referred to in the opinion may be permitted not necessarily as leading to an overruling of that decision, but as certainly showing that it ought not to be extended any further, and that neither the decision or opinion is able to carry the burden of so many cases as are now sought to be laid upon it.

It is understood that that cause was not orally argued, and that the Court placed the decision upon different grounds from those taken upon either side at the trial, or suggested by either party in their respective briefs. It is possible in such case that the Court, unaided by the researches of counsel, may overlook important considerations.

It is quite clear that the third view taken by the learned judge who delivered that opinion was not the view of the Collector, or of the Attorney General. This view was that the words "not otherwise provided for" in the eighth section of the Act of 1864, in the clause, "on all manufactures of silk or of which silk is the component material not otherwise provided for" should read as if the word "herein" was in, interpolated and so read "not herein otherwise provided for."

There has scarcely been a tariff for fifty years to which this construction might not have been applied, as well as to the 8th section of the Act of 1864, the rule heretofore has been, that Revenue Statutes should be construed together, and the case in question is the first case in which it has been held that they were to this extent even to be construed separately unless it was otherwise expressly provided in the statute.

We respectfully submit that the construction that Congress intended the clause "not otherwise provided for" should read as if it meant "not otherwise herein provided for" is not apparent.

There is no reason assigned by the Court for the construction advanced. The unsupported assertion that the so-called silk clause was intended to be exhaustive is negatived by the act itself, which elsewhere provides for "flannels composed in part of silk," (page 208,) and on lastings silk for shoes and buttons, (page 214). Two instances are sufficient

Again, the construction advanced is not the natural construction of the language used; and the insertion of the very important word "herein" changes entirely the natural meaning of the term which Congress did use.

There could, of course, be no oral testimony on the subject.

The phrase in prior acts had never received such a construction, but the Courts had uniformly held that the revenue acts were one system and to be read together.

Stewart *vs.* Maxwell, 16 How., 150, 160.
Pennington *vs.* Coxe, 2 Cranch., 33.
Potter's Dwarris on Statutes, 189
and notes.

The uniform action of the Treasury Department has been in harmony with this view.

No acute importer or astute revenue lawyer, or Secretary of the Treasury, or collector in the country had ever raised the question when the same words were used in tariff acts reducing or increasing the duties.

Substantially the same words were used in the silk clause in the Act of August 5, 1861, which was an act to provide increased revenue upon imports, and likewise in the silk clause in the Act of March 2, 1861; also in the Act of 1846, schedule D, "manufactures of silk or of which silk shall be a component material not otherwise provided for 25 per cent."

The same words were in the Act of August 30, 1842, to provide revenue and change and modify duties.

All manufactures of silk not otherwise specified except, &c., two dollars and fifty cents a pound. Then follows a great variety of articles, thirty or forty in number, made of silk at special rates concluding, "and all other articles of silk made up by hand in whole or in part, and not otherwise provided for thirty per cent". (5 Stat at Large, 550)

Now in all these Acts of '42, '46, '61 and '64, in which the above terms are used, silk articles are enumerated either by their specific names, or by the name of the class including them in different sections of these acts, from what may be termed the silk section. This we submit demonstrates absolutely that it has not been the purpose of Congress, in either of those acts to include all articles made of silk in the classification of manufactures of silk, not otherwise provided for at a uniform rate of duty, or not provided for in words of Smythe *vs.* Fiske, "by the preceding parts of the section of which they made the closing words."

Again we respectfully submit that there is no sufficient evidence, nor can it be reasonably presumed that Congress intended that importers should find in this statute, as passed by Congress, an unexpressed word so important that with it in, goods are made dutiable at a higher rate than they might be with it out.

There is no denying that the construction criticised does interpolate the word "herein".

The phrase in a Revenue Statute "not otherwise provided for," is not in the natural signification of the language limited to a present provision made the instant the law is passed, by the law itself. It does not mean not otherwise provided for in any such limited, restricted sense but naturally means not otherwise provided for in existing tariff acts. *Provided*, is in a past tense, and its use does not import a merely present provision restricted to the act, but the natural signification of the word is, not otherwise provided for by law. If at that time the goods are in any way in an existing act actually "otherwise provided for," different from manufactures of silk, &c., then by the express terms of the act they are excluded

from the classification and rate of duty affixed to "manufactures of silk." And to determine what is an existing law when "not otherwise provided for" is used we must look at the state of the law just before the term is used.

It is a general rule not to add or interpolate a word in a statute so as to change the construction.

Potter's Dwarris, on Stat. 199
Sedgwick on Stat., 245-6 and cases cited.

Congress in this very act shows its knowledge and consideration of the effect of the use of the word "herein."

Section five, 13 Stat. at Large, 207, near middle, provides "that goods of like description composed of worsted, the hair of the alpaca, &c., &c., shall pay the same duties and rates of duty *herein* provided for woolen cloths."

Section two provides that in lieu of duties heretofore imposed by law on the articles hereinafter mentioned there shall be levied, collected and paid on the goods, wares and merchandise enumerated and provided for in this section.

So again the draughtsman shows his knowledge of the effect of the insertion or omission of the word "herein" by its use in the thirteenth section, page 214, where it is used as follows:

"On meerschaum, wood, porcelain, lava and all other tobacco smoking pipes and pipe bowls not *herein* otherwise provided for, one dollar and fifty cents per gross."

By what process of reasoning could the word "herein" be stricken from this section?

An examination of other Tariff Acts will show similar results.

And the twenty-second section of this Act shows not only that Congress did not intend it to be a comprehensive Tariff Act, but that the draughtsman had the existing laws in mind, and that he knew, or should have known, their provisions. (See proviso attached to 22nd Section, 13, Stat. at large, 216).

The fact that the word "herein" and words of similar import, to limit a provision to the section or to the

act, are used in some cases and omitted in others, proves that Congress knew its signification, and it is not consonant with sound rules of construction arbitrarily either to insert or omit it in a given case.

Therefore, we repeat, that Congress did not intend the Act of 1864 to be general in the sense that it should cover all dutiable articles, and that the word "herein" ought not to be interpolated to mean herein in this Act or in this section.

That the word "herein," if interpolated, certainly does not mean "herein in this section"; because, 1st. Congress does not say so; and 2nd, when Congress so mean to restrict that word, when actually used, they do so expressly provide in this very Act as in section two "provided for in this section." (Page 202).

IV.

But we are not dependent upon overthrowing the case of Smythe *vs.* Fiske, to maintain our position. We have ventured the foregoing suggestions in respect to that decision to show strong reasons why, if it were a new question, it might well have been differently decided; or at least that the decision arrived at might well have been put upon different grounds, *ex. gr.*, the fact of the exception of silk ~~just~~ first appearing in the Revised Statutes in connection with the reproduction of the enactment of the earlier statutes, and as leading up to the conclusion that such methods of construction should not be extended, or applied if at all, except in identical cases.

The case at bar is clearly distinguishable.

What is the exact point decided in Smythe *vs.* Fiske, if not this?

That silk ties, not being specifically enumerated by name, in the conflict between the provisions "on *all* manufactures of silk" and the Act of 1864, and provisions in the Acts of 1861 and 1862, for articles worn by men, &c., of whatever material composed, the rate of duty fixed by the Act of 1864, was the correct rate; and this particularly in view of the action of Congress in the

Revised Statutes, where repeating the provisions of the Acts of 1861 and 1862, for "articles worn by men, &c., of whatever material composed," the exception of "silk" was for the first time found in the statute. We submit that this case is not the case at bar.

There is nothing in the facts of that case or in the opinion warranting the idea that the long line of decisions relative to commercial designation were intended to be affected by it; or that those decisions which hold that the classification of articles for duty under specific names under previous statutes, are not to be charged by general words in subsequent statutes were intended to be reversed. Neither is it to be presumed that the rules as to the construction of statutes *in pari materia* were intended to be modified by that decision; or that the well settled principles of construction in cases of repugnancy should be changed.

The decision in the light of the facts involved may be formulated in general words as going to no greater extent than this, that when a duty has been laid on an article by words of general description merely, as "on articles worn by men, women or children, of whatever material composed," that such duty might be changed by words of general description such as "on all manufactures of silk, or of which silk is the component of chief value." The decision in no case ought to be extended further than that duties imposed by general description may be repealed by other words of general description. Not that words of general description merely may repeal or modify duties imposed by the use of specific terms or names of commercial designation.

It is quite plain that the doctrine was not intended to overrule Homer *vs.* The Collector, *supra*, or the then recent case of Reiche *vs.* Smythe, *supra*, which cases no ingenuity can distinguish from the case at bar, for these are not criticised in the opinion. And at this term the doctrine of those cases has been applied and re-affirmed to the benefit of the revenue in Movius *vs.* Arthur.

In the present case the article in question is thread lace, a specific definite commercial term; that name is

found in the Statutes of 1861 and 1862, and is not found in any other subsequent statute until the revision, it is also found in the revision; these facts distinguish this case from Smythe *vs.* Fiske, and bring it within the principles of Homer *vs.* The Collector, Reiche *vs.* Smythe, and Movius *vs.* Arthur.

The judge who tried this cause so considered, and while not questioning the decision in Smythe *vs.* Fiske was of the opinion that it had no relevancy to the facts of the present case. We respectfully submit that in this he was correct, and that there was no error in his rulings, that there was a question of fact, and that if commercially the article in controversy came within the category of thread lace, the importer was entitled to a verdict.

Again, effect must be given to the proviso of the 22d Section of the Act of 1864, that the duties on goods, &c., not provided for by this act, "shall be and remain as they were."

Giving effect to it the duties upon "thread lace" remained unchanged. It is found as a fact that our goods are thread lace; therefore, the duties upon them are as by the Acts of 1861 and 1862; and we are thus distinguished from the case of Smythe *vs.* Fiske.

So, also, the cases must be distinguished in order to justify the Revised Statutes, which provide, as we have seen, for thread laces, for cotton laces, and for silk laces, thus sustaining the views we urge, just as in Smythe *vs.* Fiske, the provisions of the revision sustained the view taken by the Court.

V.

As to the specific errors assigned:

The four first have already been substantially considered. They go to the actual merits of the case, and involve the question as to the construction of the Statutes, and nothing more.

The fifth, sixth and seventh error assigned relate to re-

quests to charge, which were unnecessary, and which were substantially covered by the charge as given. The Court, in instructing the jury, that they could only find for the plaintiff in case the article in question was known as "thread lace," practically charged the substance of these requests.

The eighth error assigned is substantially the same as the third, and has been considered.

The other requests to charge assigned for error are so purely hypothetical, or based upon assumptions not warranted by the evidence, that no Court would have been justified in embarrassing a jury by so instructing them.

If the Court was right upon the main question, then the question of fact resulting from holding, as the Court did upon the main question, was fully and fairly submitted to the jury, and there was no error in refusing to give the specific requests in the exact language proposed by the District Attorney.

It is not error in a Court to refuse to repeat the arguments of counsel as a charge to the jury.

WILLIAM STANLEY,
STEPHEN G. CLARKE,
Of Counsel for Defendants in Error.

Thread laces.